17115
111

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE, ET AL., PLAINTIFFS IN ERROR,

vs.

MRS. ANNIE E. BREWER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JULY 21, 1911.

(22,810)

(22,810)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE, ET AL., PLAINTIFFS IN ERROR,

vs.

MRS. ANNIE E. BREWER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print
Record from civil district court for the parish of Orleans	*a*	1
Detailed list of docket entries in chronological order from docket No. 5 in the above numbered and entitled cause from the 18th day of November, 1908 (the date of the filing of the original petition), to the 24th day of June, 1910 (the date of the filing of the appeal bond), inclusive.	*a*	1
Petition	1	3
Motion for oyer and sheriff's return thereon	4	5
Supplemental petition and order	6	6
Answer and call in warranty	8	8
Exception of warrantors to plaintiff's petition	10	9
Plea of unconstitutionality against two years' prescription	12	10
Exception overruled	13	11
Answer of Etienne Gele *et als.* and call in warranty	14	12
Answer and call in warranty of Bernard Recurt	18	14
Exception of Maria Babcock *et als.*, warrantors	22	17
Motion to place Hall & Monroe as attorneys	23	18
Supplemental and amended answer and order	24	18
Exception of Mrs. Maria Babcock called in warranty	25	19
Exception referred to the merits (extract from minutes)	26	20
Answer	26	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1913.

INDEX.

	Original.	Print
Testimony and notes of evidence taken in open court	27	21
Testimony of Leo Fellman	32	24
Act of sale in the succession of the late Henry Parish Conrey to George Brewer, passed before Thomas Layton, notary public, on June 9, 1860	41	29
Marriage contract (certified copy) between George Brewer and Mrs. Annie E. Gallagher, by notarial act before J. J. Barnett, notary public, June 13, 1874	45	32
Adjudication of bankruptcy (certified copy) of George Brewer on December 28, 1875, in the proceedings No. 1506 on the docket of the United States court for the eastern district of Louisiana, marked for identification "P-6," offered in evidence by counsel for plaintiff	48	34
Adjudication of bankruptcy on debtor's petition	48	34
Appointment of Charles H. Reed as assignee in bankruptcy of George Brewer and transfer to the said Charles H. Reed, assignee of all the estate, real or personal, of the said George Brewer, bankrupt, dated February 15, 1876, "Signed C. S. Kellogg, register in bankruptcy," marked for identification "P-7," offered in evidence by counsel for plaintiff	50	35
Assignment of bankrupt's effects	50	35
Act of sale by Chas. H. Reed, assignee of the estate of George Brewer, bankrupt, to Mrs. Annie E. Gallagher, wife of George Brewer, passed before William H. Seymour, notary public, on November 23, 1876, in conveyance office book 108, folio 875, marked for identification "P-8," offered in evidence by counsel for plaintiff	52	36
Process verbal (certified copy) by A. H. Pons, auctioneer, dated June 18, 1876, annexed to an act of sale before William H. Seymour, notary public, on November 23, 1876, marked for identification "P-9," offered in evidence by counsel for plaintiff	57	39
Process verbal, bankruptcy of George Brewer	57	39
Docket entries in the succession of Henry Parish Conrey, No. 16229 of the docket of the second district court, marked for identification "P-9"	58	40
Copy of docket No. 7, second district court	58	40
Inventory (certified copy) taken in the succession of Henry Parish Conrey by Thomas Layton, notary, dated February 9, 1860, and marked for identification "P-11," offered in evidence by counsel for plaintiff	59	41
Act of sale from Gele *et als.* to Yazoo & Mississippi Valley Railroad Co., passed before W. H. Wright, November 22, 1898, registered in C. O. B. 174, folio 59, offered in evidence by counsel for plaintiff	66	45
Testimony and notes of evidence taken in open court on behalf of Etienne Gele and William Laferriere	68	46
Testimony of Scott Douglas	68	46
W. A. Lawler	74	50
Val J. Flanagan	79	53
Gaspar Petrie	82	55
Benjamin Ory	90	60

	Original.	Print
Act of sale by Bernard Recurt to William Laferriere, Etienne Gele, and Jean Marie Gele, dated March 31, 1897, together with the certificate of registry endorsed thereon showing registration of said act in the C. O. B. 163, folio 147, April 7, 1897, marked "Exhibit 1," offered in evidence by counsel for Geles *et als.*	93	62
Act of sale by the widow and heirs of George Babcock to Benjamin Recurt, executed before F. J. Aleix, notary, September 8, 1896, with endorsement thereon showing the registry in the conveyance office of said act in Book 166, folio 15, and marked "Exhibit 2," offered in evidence by counsel for Geles *et als.*	97	64
Plan and certificate of survey (annexed to Exhibit 2) made by W. H. Reynolds, civil engineer, dated October 12, 1895.	103	68
Act of sale by Henry C. Boucher to George W. Babcock, passed before Theo. Guyol, notary public, dated January 15, 1872, with the certificate of registry endorsed thereon showing the registry of said act in C. O. B. 132, folio 168, dated January 16, 1872, marked "Exhibit 3," offered in evidence by counsel for Geles *et als.*	104	68
Testimony and notes of evidence taken in open court on behalf of the Yazoo & Mississippi Valley Railroad Co.	107	70
Testimony of F. G. Davis	108	70
Testimony of O. M. Dunn	114	75
Reasons for judgment	120	78
Judgment	124	81
Motion for appeal	126	82
Appeal bond	127	83
Transcript of record, No. 92721 of the docket, civil district court, parish of Orleans, transferred from the late fourth district court under No. 1966, entitled P. Conrey, Jr., *et als.*, *vs.* V. C. Currell, offered in evidence by counsel for plaintiff (certified copy)	129	85
Petition for partition	129	85
Judgment decreeing partition	130	86
Petition to homologate, etc.	130	86
Judgment of partition, rendered November 4, 1848	131	87
Record in the succession of Henry Parish, No. 32065 of the docket of the late second district court, transferred to the civil district court, parish of Orleans, under No. 79241, marked for identification "P-2," offered in evidence by counsel for Gele *et als.*	132	88
Probating will	132	88
Petition, copy of will, and decree, etc.	146	98
Order to register and execute last will and testament	147	98
Petition and order for inventory	147	99
Order to take inventory	148	99
Oath of appraisers	148	99
Petition and inventory and order	149	100
Inventory	149	100
Petition praying for sale of property and order	151	102
Petition and order to have power of attorney filed	153	103

	Original.	Print
Power of attorney	153	103
Petition and order of D. Parish to be recognized as executor	155	104
Certificate of clerk of civil district court to record	156	105
Transcript of appeal filed	157	106
Case called and continued with preference (extract from minutes)	157	106
Motion and order to enter name of Leverich as counsel (extract from minutes)	157	106
Case called and continued with preference (extract from minutes)	158	107
Case called and continued with preference (extract from minutes)	158	107
Case called, argued, and submitted (extract from minutes)	158	107
Plea of prescription	158	108
Judgment (extract from minutes)	159	109
Opinion of the supreme court	160	109
Petition for rehearing (Etienne Gele *et als.*)	172	117
Petition for rehearing (Yazoo & Mississippi Valley Railroad Co.)	175	120
Rehearing refused (extract from minutes)	178	121
Petition for writ of error and assignment of errors	178	122
Order granting writ of error	181	124
Copy of writ of error	183	124
Bond for writ of error	185	125
Certificate of Paul E. Mortimer, clerk of the supreme court of Louisiana	188	127
Certificate of Hon. Joseph A. Breaux, chief justice of the supreme court of Louisiana	189	127
Certificate of Paul E. Mortimer, clerk of the supreme court of Louisiana, as to the signature of the chief justice, etc.	190	128
Original writ of error	191	128
Citation (original) on Mrs. Annie E. Brewer and sheriff's return thereon	193	129

a

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Civil District Court, Parish of Orleans, Division "A."

No. 87,850.

WIDOW ANNIE E. BREWER
vs.
YAZOO & MISS. VALLEY R. R. Co.

Present: Hon. T. C. W. Ellis, Judge.

Detailed List of Docket Entries, in Chronological Order from Docket No. 5, in the Above-Numbered and Entitled Cause from the 18th Day of November, 1908 (the Date of the Filing of the Original Petition), to the 24th Day of June, 1910 (the Date of the Filing of the Appeal Bond), Inclusive.

1908.
Nov. 18. Petition.
18. Copy of Petition & Citation.
20. Return to Citation.

b

1908.
Dec. 1. Motion for costs.
1. Bond for costs.
3. Motion to produce and file documents.
7. Return to Notice.
7. Return to Motion.
9. Supplemental Petition & Order.
11. Continued.

1909.
Jan. 15. Rule continued.
Feb'y 5. Answer and call in warranty.
6. 7 copies of Petition & 7 Citation and answers.
9. Motion for additional Bond.
10. Bond for costs.
12. Return to Notice.
18. Return to 7 Citation.
19. Exception of Warrantors.
25. Motion to fix Exception.
March 5. Continued.
12. Plea of unconstitutionality.
12. Petition amended 8 days granted to answer.

April 7. Answer of E. Gele et als. to call in warranty.
7. Copy of Petition Supplemental Petition and Answer.
May 16. Record withdrawn.
7. Record Returned.
17. Record withdrawn.
31. Record returned.
31. Answer & call in warranty.
31. 5 Copies of Petition 5 Copies of Answer of Gele and 5 Copies of Answer & 5 Citations.
June 10. Motion of security.
10. Exception of M. Babcock et als.
15. Return to Notice.
c

June 25. Return to 2 Citation.
Dec. 29. Motion to place Hall & Monroe.

1910.
Feb'y 4. Record withdrawn.
11. Record Returned.
14. Record withdrawn.
16. Supplemental & Amended answer & order.
17. Motion to fix.
23. Return to notice of trial.
25. Continued.
March 4. Exception referred to merits.
7. Record returned.
8. 2 Subs.
10. Con.
April 5. 4 Subs.
24. Con.
7. Answer.
7. Con.
7. Filing one Document.
May 19. Argument Con.
23. Con.
26. Sub.
26. Evidence and Duplicate.
26. 9 Documents.
26. Evidence & Duplicate.
26. 4 Documents.
27. Evidence & Duplicate.
June 13. Judgment.
16. Motion for Record.
17. Judgment Signed.
24. Motion for Sus. & Duvol. Appeal & Bond.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition.

Filed November 18th, 1908.

Civil District Court, Division "A."

No. 87,850.

WIDOW ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY R. R. Co.

To the Honorable the Judges of the Civil District Court in and for the Parish of Orleans, State of Louisiana:

The petition of Annie E. Brewer (born Gallagher) widow of George Brewer, who resides in this City respectfully shows:

That she is the true and lawful owner of the following described property:

A certain square of ground situated in the sixth municipal district of this City, bounded by Hagan Ave., Violet or Clark St. Melpomene and Thalia St., That your petitioner who was separated in property from her husband, George Brewer, by virtue of marriage contract passed before John J. Barnett, N. P., on the 13th, of June 1874, acquired said property by act passed before Wm. H. Seymour, N. P., dated November 23rd, 1876, from Charles H. Reed,
2 assignee of the Estate of said George Brewer, Bankrupt, said sale being duly recorded in C. O. B. 108, folio 875, said George Brewer having acquired said property by act passed before Thomas Layton, N. P., dated — 9th, 1860, recorded on July 13th, 1860 C. O. B. 83, folio 315 at Judicial sale from James Grimshaw duly qualified administrator of the succession of Henry Parish Conrey No. 16,229 of the 2nd. District Court; Henry Parish Conrey having acquired said property under the terms of the last will and testament of Henry Parish of New York City as particular Legatee said will having been duly probated in Surrogate Court of the County of New York, State of New York, on the 16th, day of December 1857 and which was subsequently ordered registered and executed on the 11th, day of April, 1868, in the 2nd, District Court in the Louisiana Succession of Henry Parish, No. 32,065 of the Docket of that Court, said will being recorded in Will Book No. 15, pp. 78 et Seq. Said Henry Parish being owner of said square of ground by virtue of judgment of the Fourth District Court of New Orleans rendered on the 4th, November 1848 in partition suit entitled: Peter Conrey, Jr., et als., vs. V. C. Currell, No. 1966 of the docket of the said court, certified copy of which judgment is attached to

an act of sale of October 22nd, 1849, Mrs. Victoire to Gustave Cruzat passed before H. B. Cenas, Notary Public.

Petitioner further shows that the Yazoo & Mississippi Valley Railroad Company, a Louisiana corporation by operation of Act 38 of 1882 of the General Assembly of this State, doing business and having office in this City, claims to be the owner by virtue of a sale made to it by Wm. Laferriere and Jean Etienne Gele of the following portion of said square of ground:

Commencing at the corner of Hagan Ave. and Melpomene St., 223'9" front on Hagan Ave., up to the corner of Thalia St., thence a depth along Thalia St., of 35' running toward Clark St., and reaching to Clark St., at a point on said Clark St., 83'6" distant from the corner of Clark and Melpomene St. thence along Clark
3 St., at a distance of 83' 6" up to the corner of Melpomene and thence a depth and front on Melpomene St., of 277'7" up to the point of beginning at the corner of Melpomene and Hagan Ave., where as in truth and in fact its vendors had no title whatsoever to the portion of said square so attempted to be sold for various reasons and particularly because they and they authors derive their title from a supposed sale by Daniel Parish as executor of Henry Parish on April 25th, 1871, fourteen years after the probating in New York of said Parish's will and three years after said will had been ordered registered and executed by the Second District Court on the petition of said executor, which sale was absolutely null and void, the said executor having no power to seek and the Judge no power to grant an order of sale 1st, of property specially bequeathed to another by the testator. 2, of immovable property when the petition seeing the order of sale alleges on its face that there are no debts to be paid.

Petitioner further shows that said defendants Railroad Company is not and has not been in such possession of the portion of said square above described as to compel petitioner to bring a petitory action and petitioner invokes the provisions of Act 38 of 1908 and sues to establish title to said portion of said square; but in the event that it should be shown that defendant has and had such possession of said portion of said square as to compel petitioner resort to the petitory action, then and in that event only is this suit to be construed as petitory in order to avoid multiplicity of actions.

Petitioner further shows that one of the defendant's tracks crosses the property above described and while she may not be entitled to have the defendant, Railroad Company, remove the same, she is entitled to compensation for the damages caused to the property incident to the property being subject to the servitude of right of way which damages she alleges amount to the full sum of
4 $1,500 if said defendant is allowed the servitude of right of way of the usual 15 feet in width because said right of way renders the balance of the portion of said square subject to occupation and use by petitioner of comparative little value owing to the very restricted area remaining on either side of said right of way and the naked ownership of the 15 feet right of way is only of con-

tingent value in the event defendant company should lose the servitude in one of the ways provided by law.

That the subject matter of this suit greatly exceeds the sum of $2,000.00.

Wherefore, the premises considered petitioner prays that the Yazoo & Mississippi Valley Railroad Company through its proper officer or Agent be duly cited to appear and answer this petition and after due proceedings had there be judgment in petitioner's favor decreeing her owner of the portion of square of ground above described subject to the servitude of right of way of defendant, said right of way not to exceed 15 feet in width and located where now exercised and ordering defendant Railroad to pay unto petitioner the sum of Fifteen Hundred Dollars with legal interest from date of judgment as damages caused petitioner's property.

And for all costs and equitable and general relief.

(Signed) J. M. LAPEYRE,
Att'y for Petitioner.

Motion for Oyer and Sheriff's Return Thereon.

Filed December 3rd, 1908.

Civil District Court, Division "A."

No. 87850.

MRS. ANNIE E. BREWER
vs.
THE YAZOO & MISS. VALLEY R. R. CO.

5 On motion of Gustave Lemle, Attorney for defendant, and on suggesting to the Court that plaintiff has declared upon the following documents, viz:

1. Act of separation of property, passed before John J. Barnett, Notary Public, June 13th, 1874.

2. Act of sale passed before Wm. H. Seymour, Notary, Nov. 23, 1878, from Chas. Reed, assignee of the estate of George Brewer, bankrupt.

3. Act of sale passed before Thos. Layton, Notary, June, 9, 1850, James Grimshaw, Administrator to George Brewer.

4. The alleged last will and testament of Henry Parish, of New York, said alleged will having been ordered registered and executed, April 11, 1868, in the Second District Court, Parish of Orleans, in the Louisiana Succession of Henry Parish No. 32065 of the docket of said court.

5. Sale by Daniel Parish, as executor, of Henry Parish on April 25th, 1871, and the order of Court ordering the sale of said property by the executor.

On further suggesting to the Court that defendant desires oyer of each and every one of said above mentioned and described documents:

It is ordered by the Court, that plaintiff do show cause on Friday the 11. day of December, 1908, why she should not produce and file, as a part of her petition all of the documents above mentioned and described.

N. O. La. Dec. 3, 1908.

(Signed) T. C. W. ELLIS, *Judge.*

Received Thursday December 3rd, 1908, and on the 3rd day of December 1908, I served a copy of the within Rule on Mrs.
6 Annie E. Brewer, Plaintiff herein by personal service on J. M. Lapeyre, her Attorney.

(Signed) C. M. GOSS,
Deputy Sheriff.

Returned same day.
Sheriff's Fees 50¢.

Supplemental Petition and Order.

Filed December 9th, 1908.

Civil District Court, Division "A."

No. 87850.

WIDOW ANNIE E. BREWER
vs.
YAZOO AND MISSISSIPPI VALLEY R. R. CO.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The supplemental and amended petition of Widow Annie E. Brewer, with respect represents:

That in the original petition herein filed, by clerical error, a line was omitted in the description of the portion of square of ground sought to be recovered and that said description should properly read as follows:

"Commencing at the corner of Hagan Avenue and Melpomene Street, portion measures 223' 9" front Hagan Avenue, up to the corner of Thalia Street, thence a depth along said Thalia St. of 35' running towards Clark St. thence on a line having a curve of 4 decrees and running towards Clark St. and reaching to Clark Street
7 at a point on said Clark Street 83' 6" distant from the corner of Clark and Melpomene St. thence along said Clark St. a distance of 83' 6" up to the corner of Melpomene St. and thence a depth and front on Melpomene St. of 277' 7" up to the point of beginning at the corner of Melpomene St. and Hagan Avenue."

That since the filing of her said original petition, petitioner has ascertained that Record No. 32065 of the Docket of the Second District Court, "Succession of Henry Parish" has been transferred to this Court under the docket No. 79,241 and which record contains

certified copy of the last will and testament of said Henry Parish probated before the surrogate Court for the City of New York on the 16th, day of December 1857, also the order of registry and execution of said Will by the Judge of the Second District Court bearing date April 11th, 1868 and also the original petition and order for the sale of the square of ground described in the original petition herein, said order bearing date March 11, 1871.

Now your petitioner avers that the sale by Daniel Parish of date April 25th, 1871, of the property here sued for as property of the Succession of Henry Parish is absolutely null and void for the further and additional reason that while the order for the sale of said property was rendered on March 11th, 1871, the property sold and Notarial Act subsequently passed on April 25th 1871, the record shows that it was only on May 2nd, 1871, that said Daniel Parish prayed to be recognized as executor of Henry Parish and to have letters issue to him upon his giving bond and that an order was accordingly rendered. Said Daniel Parish having no authority to demand and the Court no power to grant the order of sale for this additional reason.

Petitioner avers that no answer has yet been filed herein.

Wherefore petitioner prays leave to file this amended and supplemental petition; that a copy of same, together with a citation may be served upon the defendant in accordance with law and that in due course she have judgment in her favor and against the de-
8 fendant as prayed for in her original petition.

And for costs and general relief.

(Signed) J. M. LAPEYRE,
Att'y for Petitioner.

Service accepted citation waived, all legal rights reserved, 12/9/08.
(Signed) GUSTAVE LEMLE,
Att'y.

Order.

Let the within supplemental and amended petition be filed as prayed for and According to law.

New Orleans, La., Dec. 9, 1908.

(Sig.) T. C. W. ELLIS, *Judge.*

Answer and Call in Warranty.

Filed February 5th, 1909.

Civil District Court, Division "A."

No. 87850.

WIDOW ANNIE E. BREWER
vs.
THE YAZOO & MISS. VALLEY R. R. CO.

Now into this Honorable Court, through its undersigned counsel comes the Yazoo & Mississippi Valley Railroad Company, and for answer to plaintiff's petition, denies generally and singly each and every allegation therein contained, except what may be hereinafter admitted.

Further answering respondent avers that it is the owner of said property, having acquired same on November 22, 1898, from Jean Marie Gele, Etienne Gele and William Laferriere, by act passed before Wm. H. Wright, Notary Public, and duly recorded in
9 conveyance office, book 174 folio 59, a certified copy whereof is hereto annexed and made part hereof, as exhibit "A".

Respondent further answering avers that, at the time it purchased said property it was in the possession thereof, it having about the year 1882 built its tracks and roadbed on said property and that, since 1822, it has been in the open notorious, peaceful and undisturbed possession of said property, paying all taxes due thereon.

Respondent further answering avers, that it and its vendors were possessors in good faith, and that they have been in the open notorious, peaceful and undisturbed possession of said property under title translative of property, for more than ten years, and respondent specially pleads the prescription of ten years in bar of plaintiff's demand.

Respondent further pleads the prescription of two years under the act of the general assembly of Louisiana of 1902 act No. 227 amending act 96 of 1896 and Act 117 of 1886.

Respondent further answering, avers, that since the year 1882 its roadbed and tracks have occupied the property described in the petition; that said tracks and roadbed constitute a strip of land fifty feet wide, extending twenty-five feet from centre of the track and roadbed on each side thereof, and that said roadbed, track and right of way, were and are a continuous and apparent servitude and respondent has acquired a right of servitude for said roadbed track and right of way, on said property, even if plaintiff is the owner thereof for more than ten years, which prescription of ten years is specially pleaded.

Respondent further answering avers, that plaintiff having stood by, and permitted defendant to erect thereon its roadbed and tracks,

cannot now evict defendant from said property, but is relegated to a suit for the value of the land, at the time it was taken.

Further answering respondent avers that its vendors, to-
10 wit, the heirs of Jean Marie Gele; Mrs. Caroline Gele, widow of Jean M. Gele, Mrs. Catherine Gele wife of Gaspar Pietri, Mrs. Leontine Fahrman, (born Gele,) wife of John G. Fahrman; Mrs. Theresa L. Smith, (born Gele) wife of Robert H. Smith, and John G. Gele, and Etienne Gele and William Laferriere, all residing in this City, are necessary parties to this proceedings, and should be called in warranty herein. In the event plaintiff's demand is maintained that defendant have and recover such judgment over and against said warrantors as may be rendered in favor of plaintiff against defendant.

Wherefore respondent prays, that Etienne Gele; William Lafferiere, Mrs. Caroline Gele, Widow of Jean M. Gele; Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri, her husband to authorize her; Mrs. Leontine Fahrman (Born Gele) wife of John G. Fahrman, and said John G. Fahrman, her husband to authorize her Mrs. Theresa L. Smith, (born Gele) wife of Robert H. Smith and said Robert L. Smith, her husband to authorize her, and John G. Gele, be call- in warranty; that upon trial there be judgment rejecting plaintiff's demand at her costs; or, in the alternative that plaintiff only recover for value of the land on which respondent has constructed its roadbed, track and right of way at the time it was taken; and in that event that the same judgment may be rendered in its favor against its said warrantors; and for costs and general relief.

(Signed) GUSTAVE LEMLE,
Att'y.

Exception of Warrantors to Plaintiff's Petition.

Filed February 15th, 1909.

11 Civil District Court, Division "A."

No. 87850.

Civil District Court, Division "A."

MRS. ANNIE E. BREWER
vs.
THE YAZOO & MISS. VALLEY R. R. Co.

Now into this Honorable Court, through their undersigned Counsel come Etienne Gele; William Laferriere; Mrs. Caroline Gele widow of J. M. Gele; Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri, her husband to authorize her; Mrs. Leontine Gele, wife of John G. Fahrman; and John G. Fahrman, her husband to authorize her; Mrs. Theresa L. Gele, wife of Robert H. Smith, and said Robert H. Smith, her husband to authorize her, and John G.

Gele, all of the full age of majority, all called in warranty and made defendants herein by the Yazoo & Miss. Valley Railroad Company and excepts for themselves, and — lieu and place of the Yazoo & Miss. Valley Railroad Company to plaintiff's petition, on the following ground-:

1st. On the ground that plaintiff's petition is too vague and indefinite and not sufficient- explicit to enable defendant and Warrant-ors to plead and defend thereto.

2nd. On the ground that the same contains inconsistent and contrary demands and Plaintiff should be made to elect thereon.

3rd. On the ground that plaintiff has sought to invoke the provisions of act 38 of 1908 although admitting that the defendants, the Yazoo and Miss. Valley Railroad Company, are in physical possession of the property sued for and she, Plaintiff, has reserved the right to make her action petitory and these Respondents are entitled to compel the Plaintiff upon her admission of possession in Defendants to elect on the character of her action, and Respondent claim to be relieved from further pleading until such election.

12 Wherefore, these Exceptors pray that the foregoing Exceptions be maintained; that Plaintiff be ordered to amend her pleadings as mentioned above, and that in default thereof her suit be dismissed at her costs.

(Signed) BENJAMIN ORY,
Att'y for Above-named Defendants.

Plea of Unconstitutionality Against Two Years' Prescription.

Filed March 12th, 1909.

Civil District Court, Division "A."

No. 87850.

WIDOW ANNIE E. BREWER
vs.
YAZOO & MISS. VALLEY R. R. CO.

Plea of Unconstitutionality.

To the special prescription of two years pleaded in the answer of defendant herein plaintiff hereby specifically sets up as follows:

That in so far as Acts 96 of 1896, 227 of 1902 and 208 of 1906 whereby certain Boards and Corporations are given the right to expropriate private property, may be intended to provide a special prescription of two years in favor of said Boards and Corporation against all claims for lands or damages to the owners of said lands through the mere appropriation of said lands to the uses of said Boards and Corporations without notice actual or constructive to the owner, said acts are unconstitutional, void and of no effect:

13 1st. Because such a special prescription would in effect provide a method of acquiring private property for public use

without compensation being first paid, in the very teeth of articles 155 and 156 of the Constitution of 1879 and of article- 166 and 167 of the Constitution of 1898.

2nd. Because it does not appear in the title of said act- or of any of them that it is their purpose or that — any of them to provide a special prescription of two years in such cases or even to provide in any particular whatsoever for cases of mere appropriation of private property; and because if said acts intend to provide such prescription then they each embrace more than one object, all of which — contrary to article 29 of the constitution of 1879 and of article 31 of the constitution of 1898.

3rd. That in so far as such acts may intend to provide such special prescription in favor of said particular Boards and Corporations in cases of mere appropriation to their uses of private property, such legislation is special and Class Legislation, discriminatory and arbitrary and without a shadow of any reasonable ground to support it and contrary to the letter and spirit of both the Constitution of the State of Louisiana and that of the United States and particularly contrary to Article- 2 and 48 of our State Constitution and to the 14th. Amendment of the Constitution of the United States.

(Signed) J. M. LAPEYRE,
Att'y for Plaintiff.

Exception Overruled.

Extracts from the Minutes of Division "A."

FRIDAY, *March 12th*, 1909.

Present: Hon. T. C. W. Ellis, Judge.

14 No. 87,850.

Civil District Court, Division "A."

WIDOW ANNIE E. BREWER
vs.
THE YAZOO & MISS. VALLEY R. R. CO.

The exception in this case dismissed, petition amended and defendants granted 10 days to answer.

Answer of Etienne Gele & Als. & Call in Warranty.

Filed April 7th, 1909.

No. 87,850.

Civil District Court, Division "A."

MRS. ANNIE E. BREWER
vs.
THE YAZOO & MISS. VALLEY R. R. CO.

Now into this Honorable Court, through their undersigned counsel come Etienne Gele; William Laferriere; Mrs. Caroline Gele, widow of Jean M. Gele; Mrs. Catherine Gele, wife of Gaspar Pietri, her husband to authorize her; Mrs. Leontine Gele, wife of John G. Fahrman, and said John H. Fahrman, her husband to authorize her; Mrs. Theresa L. Gele, wife of Robert H. Smith, and said Robert H. Smith, her husband, to authorize her, and John G. Gele, called in warranty herein by the defendants, the Yazoo and Miss. Valley R. R. Co., and through said call, also made defendants herein and for answer to said call in warranty, and answer to plaintiff's petition deny all and singular the allegations contained in said Plaintiff's petition and in the Defendant's answer and call in warranty, except as may be herein after admitted.

These defendants admit that they Wm. Laferriere, Etienne
15 Gele and the late Jean M. Gele, sold to Yazoo & Miss. Valley R. R. Co., by act passed before William H. Wright, Notary, dated November 22, 1898, registered in Conveyance Office, in Book 174, folio 59, the property described in said Company's answer.

These defendants now aver that they Wm. Laferriere, Etienne Gele and the late Jean Marie Gele acquired in good faith by purchase from Bernard Recutt, by act passed before B. Ory, Notary, dated March 31, 1897, with full warranty of title in equal proportion the whole of:

Square No. 150 in the Sixth District of New Orleans, comprised within Clark, Thalia, and Melpomene Sts. and Hagan Ave.

That they, these Defendants are now and have been in actual physical and corporal possession of said square of ground through tenants and otherwise, ever since their acquisition thereof in March 1897.

That your Respondent, Mrs. Widow Caroline Gele, Mrs. Catherine Pietri, Mrs. Leontine Fahrman, Mrs. Theresa L. Smith, and John G. Gele, acquired the third interest of said late Jean M. Gele, in said square of ground, as surviving widow in community and sole heirs, respectively of the said late Jean M. Gele, as more fully appears by the proceedings had in the matter of his succession under the No. 77,185 of the Docket of the Civil District Court of this Parish.

That said Bernard Recurt had acquired the said square of ground in good faith and with full warranty of title by purchase from Mrs.

Maria L. Shute, widow of George W. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie B. Babcock, and Mrs. Mary A. Babcock, widow of Charles E. Leverich by act passed before Ferdinand J. Aleix, Notary, dated September 8, 1896 registered in the Conveyance Office of this Parish, in Conveyance 166, folio 15.

That said Mrs. Maria L. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie B. Babcock, and Mrs.
16 Widow Mary A. Leverich had acquired said square of ground as surviving widow in Community and also heirs respectively of the late George W. Babcock, as per proceedings had in the matter of his Succession, under the No. 2,301 of the Docket of the Civil District Court for this Parish.

That said George W. Babcock had acquired said square of ground in good faith and with full warranty of title, by purchase from Henry C. Boucher by act passed before Theo. Guyol, Notary, dated January 15, 1872, Registered in the Conveyance Office in Book 102, folio 68.

That said Henry G. Boucher, had acquired said property in good faith and with full warranty of title by purchase from the Succession of the late Henry Parish, as per act passed before the said Notary, Theo. Guylo, dated April 25th, 1871, registered in the Conveyance Office in Book 98 folio 595.

Your Respondent- Further aver that they and the*y* authors above named have been, for over thirty years, in full, quiet, and notorious corporal and physical possession of the property sued for herein; and they hereby plead against plaintiff's suit, and against Defendant's claim in warranty, the prescription of five, ten, and thirty years.

Your respondent- further answering, specially deny that either the plaintiff, Widow Annie Brewer or George Brewer, or Henry Parish Conrey her pretended authors, ever had any title whatsoever to said hereinbefore described property or any part thereof, they specially deny that said Henry Parish Conrey ever was the special or particular legatee of the late Henry Parish under the latter's Last Will and Testament as mentioned in plaintiff's petition and more particularly deny that the said Henry Parish Conrey was the special legatee under the said Will, of said square of ground or any part thereof.

Respondent- specially deny that Henry Parish, the former owner of said property, ever made in his said last will and testament
17 a special or particular legacy of said hereinbefore described square of ground, or any part thereof, to the said Henry Parish Conrey;

Your Respondent- now specially charge and aver that all the pretended dispositions or attempted bequests in favor of said Henry Parish Conrey contained in the hereinbefore mentioned last will and testament of said late Henry Parish, and particularly the one under which plaintiff claims that said Henry Parish Conrey acquired said hereinbefore described property are and were prohibited by the Laws of this State, and particularly by Article 1519, and 1520 of the Civil Code, and were in law and in fact attempted substitu-

tions and fidei commissa, and therefore absolutely null and void ab initio, and insufficient to give to said Henry Parish Conrey thereunder even "Color of title" to said hereinbefore described property; and insufficient to divest the legal heirs of said late Henry Parish of their title to said property;

Further answering your respondent- now aver that their Vendor to-wit: Bernard Recurt a resident of this City, is a necessary party to this proceedings and should be called in warranty herein to the end that he may defend your Respondents in their title to said property.

Wherefore Respondent- pray that Bernard Recurt of this City, may be called in warranty herein, and cited to appear and answer the plaintiff'- petition and this call in warranty; and that after due proceedings had the plaintiff's petition be dismissed at her costs; and should your Respondents be cast in this action then Respondents pray for judgment in their favor, and against their said warrantor Bernard Recurt, for the same Judgment that may be rendered against them on the principal demand and on the call in warranty of the Yazoo & Mississippi Valley Railroad Company, and Respondents pray for costs and general relief.

(Signed) BENJAMIN ORY,
Att'y for Respondents, Called in Warranty
Yazoo & Miss. Valley R. R. Co.

18 *Order.*

Let Bernard Recurt, of this City, be call- in warranty herein, and let him be cited to appear and to answer Plaintiff's petition, and this call in warranty as prayed for according to law.

New Orleans, La., April 7th, 1909.

(Signed) T. C. W. ELLIS, *Judge.*

Answer and *Call in Warranty of Bernard Recurt.*

Filed May 31st, 1909.

Civil District Court, Division "A."

No. 87850.

Mrs. Annie E. Brewer
vs.
Yazoo & Miss. Valley R. R. Co.

Now into this Honorable Court, through his undersigned counsel, comes Bernard Recurt called in warranty herein by Etienne Gele, William Laferriere, Mrs. Caroline Gele, widow of Jea- M. Gele, wife of Gasper Pietri, and Gaspar Pietri her husband, Mrs. Leontine Gele, wife of John G. Fahrman, and said John G. Fahrman her husband, Mrs. Theresa L. Gele, wife of Robert H. Smith, and said Robert H. Smith, her husband, and John G. Gele, who were called in

warranty herein by the defendants the Yazoo & Mississippi Valley Railroad Company and who called your respondent in warranty and who through said call is made a defendant, and for answer to the said call in warranty and in answer to the call in warranty of the Yazoo & Mississippi Valley Railroad Company.

And for answer to the petition, original and supplemental
19 of the plaintiff Mrs. Annie E. Brewer, denies all and singular the allegations in all of said documents contained except as may hereinafter be admitted.

Further answering respondent admits that he sold the said described property to William Laferriere, Etienne Gele and the late Jean Marie Gele by an act passed before B. Ory, Notary dated March 31st, 1897 as alleged:

Further answering respondent avers that he acquired the said square of ground No. 150 in the Sixth District of New Orleans, comprised within Clark, Thalia and Melpomene Sts., and Hagan Ave., in good faith and with full warranty of title by purchase from Mrs Maria L. Shute, widow of George W. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie Babcock, and Mrs. A. Babcock, widow of Charles E. Leverich, by act passed before Ferdinand J. Aleix, Notary act dated September 8th, 1896, registered in the *in the* Conveyance Office of this Parish in Book 166 folio 15.

That said Mrs. Maria L. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie Babcock and Mrs. Mary L. Leverich did acquire said square of ground as surviving widow in community and sole heirs respectively of the late George W. Babcock as per proceedings had in the matter of his succession, No. 2301, of the docket of the Civil District Court of this Parish.

That the said George W. Babcock had acquired said square of ground in good faith and with full warranty of the title by the purchase from Henry C. Boucher, by act before Theo. Guyol, Notary, dated January 15th, 1872, Registered in Conveyance Office in Book 102 folio 68.

That Henry C. Boucher had acquired said property in good faith and with full warranty of title by the purchase from the succession of the late Henry Parish, as per act passed before the said Notary, Theo. Guyol, dated April 25th, 1871, registered in the Conveyance Office in Book 98 folio 595.

Your respondent further avers that he and his authors
20 and his succession, down to and including the Yazoo & Mississippi Valley Railroad Company, have been for thirty years in full, quiet, and notorious corporal and physical possession of the property sued for herein and he hereby pleads against plaintiff's suit and against the defendants and warrantors called in warranty, the prescription of two, five, ten and thirty years.

Your respondent further specially denies that either the plaintiff, the widow Annie E. Brewer, or George Brewer, or Henry Parish Conrey, her pretended authors, ever had title whatsoever to the said herein before described property or any part thereof; and specially denies that said Henry Parish Conrey ever was the special or parti-

cular legatee of the late Henry Parish, under the latter's Last Will and Testament as mentioned in plaintiff's petition, and more particularly denies that said Henry Parish Conrey was the special legatee under said will of said square of ground or any part thereof.

Respondent specially denies that Henry Parish, the former owner of said property, ever made in his said last will and testament a special or particular legacy of said hereinbefore described square of ground, or any part thereof, to the said Henry Parish Conrey.

Your respondent now specially charges and avers that all the pretended disposition or attempted bequests in favor of said Henry Parish Conrey contained in the hereinbefore mentioned Last Will and Testament of said late Henry Parish, and particularly the one under which plaintiff claims that said Henry Parish Conrey acquired said hereinbefore described property are or were prohibited by the law of the State and particularly by Article 1519 and 1520 of the Civil Code, and were in law and in fact attempted substitution and Fidei commissa, and, therefore, absolutely null void ab initio and insufficient to give the said Henry Parish Conrey thereunder even "Color of title" to said hereinbefore described property, and
21 insufficient to divest the legal heirs of said late Henry Parish of their title to said property.

Further answering your respondent now avers that his vendors, to-wit: Mrs. Marie L. Shute, widow of George W. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie Babcock, and Mrs. Mary A. Babcock, wife of Charles E. Leverich, all residents of this City and necessary parties to these proceedings and should be called in warranty herein to the end that they may defend your respondent in his title to said property.

Wherefore respondent prays that Mrs. Marie L. Shute, widow of George W. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Leocadie Babcock, and Mrs. Mary A. Babcock, wife of Charles E. Leverich, all of this City may be called in warranty herein and cited to appear and answer to plaintiff's petition, to answer a call in warranty of the Yazoo & Mississippi Valley Railroad Company, to answer a call in warranty of Etienne Gele, William Laferriere, Mrs. Caroline Gele, widow of Jean M. Gele, Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri her husband, Mrs. Leontine Gele, Wife of John G. Fahrman, and said John G. Fahrman her husband, Mrs. Theresa L. Gele, Wife of Robert H. Smith and said Robert H. Smith her husband, and John G. Gele and this answer and call in warranty, and after due proceedings had that plaintiff's petition be dismissed at her costs; and should your respondent be cast in this action *they* respondent prays for judgment in his favor and against his said warrantors, Mrs. Maria L. Shute, widow of George W. Babcock, George C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie Babcock, Mrs. Mary A. Babcock, widow of Chas. E. Leverich, for the same judgment that may be rendered against them on the principal demand and on the call in warranty of the Yazoo & Miss. Valley Railroad Company, and Etienne Gele, William Laferriere, Mrs. Caroline Gele, wife of Gasper Pietri, and Gaspar Pietri her husband, Mrs. Leontine Gele, wife of John G.

Fahrman, and said John G. Fahrman her husband, Mrs. Theresa L. Gele, Wife of Robert H. Smith, and said Robert H. Smith
22 her husband, and John G. Gele;

And respondent prays for general and equitable relief.

(Signed) CAGE, BALDWIN & CRABITES, *Att'ys.*

Order.

Let Mrs. Maria L. Shute, widow of George W. Babcock, Geo. C. Babcock, Miss Louise Boucher Babcock, Miss Cora Leocadie Babcock, and Mrs. Mary A. Babcock, widow of Charles E. Leverich of this City be called in warranty herein and let them be cited to appear and answer to the plaintiff's petition, to answer to the call in warranty of the Yazoo & Mississippi Valley Railroad Company, to answer the call in warranty of Etienne Gele, William Laferriere, Mrs. Caroline Gele, widow of Jean M. Gele, Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri her husband, Mrs. Leontine Gele, wife of John G. Fahrman and said John G. Fahrman her husband, Mrs. Theresa L. Gele, wife of Robert H. Smith, and Robert H. Smith, her husband, and John G. Gele, and this answer and call in warranty as prayed for and according to law.

New Orleans, Louisiana, May 31, 1909.

(Signed) T. C. W. ELLIS, *Judge.*

Exception of Maria Babcock et als., Warrantors.

Filed June 10th, 1909.

Civil District Court, Division "A."

No. 87850.

Mrs. Annie E. Brewer
vs.
Yazoo & Miss. Valley R. R. Co.

23 Now into Court through undersigned counsel, comes Mrs. Maria Babcock, Dr. George C. Babcock, Miss Cora L. Babcock, (through Hibernia Bank & Trust Company, curator) and Mrs. Mary A. Leverich, (Through George and Louise F. Leverich), warrantors and, for exception to plaintiff's demand says:

1. That plaintiff's petition is vague, general and indefinite, and discloses no just or legal cause of action.

2. Warrantors urge the plea of one, three, five, ten and thirty years' prescription.

Wherefore exceptors and warrantors pray that the above exceptions may be maintained and plaintiff's suit dismissed at her costs; and for all general and equitable relief.

(Signed) R. T. & G. T. BEAUREGARD &
WINN WRIGHT,
Att'ys for Warrantors.

Motion to Place Hall & Monroe as Attorneys.

Filed December 29th, 1909.

Civil District Court, Division "A."

No. 87850.

Widow ANNIE E. BREWER
vs.
YAZOO & MISS. VALLEY R. R. CO.

On motion of J. M. Lapeyre who, with the consent of plaintiff has retired as attorney for the plaintiff herein and of Hall & Monroe, attorneys:

It is hereby ordered that Hall & Monroe be substituted as Attorneys of Record for Plaintiff in this cause.

(Signed) J. M. LAPEYRE.
(Signed) HALL & MONROE.

F. D. K.

24 *Supplemental and Amended Answer & Order.*

Filed February 16th, 1910.

Civil District Court, Division "A."

No. 87850.

Widow ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY R. R. CO.

Now into this Honorable Court, through its undersigned counsel, comes the Yazoo & Mississippi Valley Railroad Company, made defendant in the above numbered and entitled cause, and reiterating all the averments of its original answer, begs leave to amend its answer by inserting the following:

"But should this Court hold that your respondent is not the owner of the said land claimed by the plaintiff, and only in this event, then in the alternative, your petitioner avers that it has had and enjoyed an open, public, peaceable and continuous right of way across the said land, which said right of way and servitude in favor of your respondent has continued for more than ten (10) years prior to the filing of this suit, and your respondent specially pleads the prescription of ten (10) years by which it has acquired said right of way and servitude across the said land.

Wherefore respondent prays that the petition of the plaintiff be dismissed at her costs, and that respondent be decreed the owner

of the said land, but should this Honorable Court not render such judgment, then in the alternative, and then only, respondent prays that it be decreed the owner of the right of way or servitude, across the land, and for a judgment recognizing and perpetuating its said right of way.

And for all general and equitable relief.

(Signed) GUSTAVE LEMLE, *Att'y.*

25 *Order.*

Let the Supplemental and amended answer of defendants herein be filed.

New Orleans, February 16th, 1910.

(Signed) T. C. W. ELLIS, *Judge.*

Exception of Mrs. Maria Babcock to Call in Warranty.

Filed February 18th, 1910.

Civil District Court, Division "A."

No. 87850.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISS. VALLEY R. R. CO.

Now into Court comes Mrs. Maria Babcock and for exception to the call in warranty herein says that there is non-joinder of parties and a mis-joinder of parties to the call in warranty by said Bernard Recurt:

Exceptor further pleads the exception of no cause of action.

Exceptor further pleads the prescription of ten and thirty years.

Wherefore exceptor prays that these exceptions may be maintained and the call in warranty as against this exceptor dismissed; and exceptor prays for all general and equitable relief.

(Signed) W. WINN WRIGHT &
G. T. BEAUREGARD,
Att'ys for Exceptor.

26 *Exception Referred to the Merits, Extract from the Minutes of Division "A," Friday, March 4th,* 1910.

Present: Hon. T. C. W. Ellis, Judge.

No. 87850.

Mrs. Widow M. Brewer
vs.
Yazoo & Miss. Valley R. R. Co.

The Exception in this case referred to merits by consent.

Answer.

Filed April 7th, 1910.

Civil District Court, Division "A."

No. 87850.

Mrs. Annie E. Brewer
vs.
Yazoo & Miss. Valley R. R. Co.

Now into Court comes Mrs. Maria Babcock, Dr. George C. Babcock, Hibernia Bank & Trust Co., curator for Miss Cora L. Babcock, interdict, Mrs. Mary A. Leverich, through her sole heirs at law George B. Leverich and Miss Louise F. Leverich and with full reservation of the exceptions heretofore filed herein, for answer deny all and singular the facts and allegations in plaintiff's petition.

Wherefore respondents pray that after due proceedings plaintiff's demand may be denied and rejected; and respondents pray for cost and for all general and equitable relief.

(Signed) W. WINN WRIGHT &
G. T. BEAUREGARD,
Att'ys for Respondents.

27 STATE OF LOUISIANA:

Civil District Court, Division "A."

No. 87850.

Mrs. WIDOW M. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY et al.

Testimony and Notes of Evidence Taken in Open Court Before the Hon. T. C. W. Ellis, Judge Presiding, on the 7th Day of April, A. D. 1910, on Behalf of the Plaintiff.

Appearances:

For the plaintiff: J. M. Lapeyre, Esq. and Messrs. Hall, Monroe & Lemann.

For Yazoo & Mississippi Valley Railroad Co.: Messrs. Gus. Lemle and A. A. Moreno.

For Etienne Gele et al. and William Laferriere: Benjamin Ory, Esq.

For George Babcock et al.: Messrs. W. W. Wright and G. T. Beauregard.

For Bernard Recourt: Hugh C. Cage, Esq.

28 By Mr. LEMANN: Counsel for plaintiff produce, offer and files in evidence:

(1) Certified copy of record of proceedings in the matter of Peter Conrey, Jr., vs. V. C. Currell et al., No. 1933 of the docket of the late Fourth District Court, transferred to the Civil District Court for the parish of Orleans, under the No. 92,721, marked for identification, "P-1."

(2) Original record in the succession of Henry Parish, No. 32,065 of the docket of the late Second District Court, transferred to the Civil District Court for the parish of Orleans, under the No. 79,241; marked for identification "P-2."

(3) Certified copy of the last will and testament of the late Henry Parish, dated September 20th, 1842, filed in the records of this Court, in the succession of Henry Parish, No. 32,065 of the docket of the late Second District Court, transferred to the Civil District Court for the Parish of Orleans under the No. 79,241, marked for identification "P-3."

By Mr. ORY: To which offer of will, counsel for Etienne Gele and others objects on the ground that the will upon its face, shows an attempted substitution and fidei commissa in favor of Henry Parish Conrey, and therefore that part of the will is null and void under the law of this State, and is objected to at this time as being insufficient to show in this plaintiff, any title whatsoever under the laws of this State, in the property in question.

By Mr. CAGE: In which objection counsel for Bernard Recourt, joins.

By Mr. LEMLE: I offer the same objection on behalf of the Yazoo & Mississippi Valley Railroad.

By Mr. WRIGHT: On behalf of George Babcock, et al., I join in the objections.

By the COURT: I will refer the objections to the effect of the document.

29 By Mr. ORY: To which ruling of your Honor I will reserve a bill. We claim this will is absolutely null and void; the validity can be attacked collaterally by the parties in interest, if it contains a substitution and fidei commissa. We take note of the ruling of the court merely to place the record in proper shape.

By the COURT: My ruling simply transfers the objection to the effect, without admitting the evidence; whether it is worth anything as evidence, that is a matter to be shown.

By Mr. LEMANN: I desire to say that I have caused the records of the succession of Henry Parish Conrey to be looked for by the Custodian of Notarial records, and he reports that he is unable to find them.

By Mr. LEMANN: Let me finish my offer gentlemen.

(4) Certified copy of act of sale in the succession of Henry Parish Conrey to George Brewer, passed before Thomas Layton, Notary Public on June 9th, 1860; recorded in Conveyance Office in this parish, C. O. B. 83, fo. 315, marked for identification "P-4."

(5) Certified copy of marriage contract between George Brewer and Mrs. Annie E. Gallagher, by notarial act before J. J. Barnett, notary public, June 13th, 1874; recorded in M. O. B. 128, Fo. 557; marked for identification "P-5."

(6) Certified copy of adjudication in bankruptcy of George Brewer on December 28th, 1875, in the proceedings No. 1506, on the docket of the United States Court for the Eastern District of Louisiana, marked for identification "P-6."

(7) Certified copy of appointment of Charles H. Reed, as Assignee in Bankruptcy of George Brewer, and transfer to the said C. H. Reed, Assignee, of all the estate, real or personal, of the said George Brewer, bankrupt, dated February 15th, 1876; signed "C. S.

30 Kellogg, Register in bankruptcy," marked for identification, "P-7."

(8) Certified copy of act of sale by Charles H. Reed, assignee of the estate of George Brewer, bankrupt, to Mrs. Annie E. Gallagher, wife of George Brewer, passed before William H. Seymour, notary public, on November 23, 1876; recorded in C. O. B. 108, folio 875; marked for identification, "P-8."

(9) Certified copy of proces verbal by A. H. Pons, auctioneer, dated June 18, 1876, annexed to an act of sale before William H. Seymour, notary public on November 23, 1876, marked for identification, "P-9."

(10) Copy of docket entries in the succession of Henry Parish Conrey, No. 16,229 of the docket of the Second District Court, marked for identification "P-10."

(11) Certified copy of inventory taken in the succession of Henry

Parish Conrey, by Thomas Layton, notary, dated February 9, 1860, and marked for identification "P-11."

(12) Certified copy of petition for an order of sale of the property in bankruptcy of George Brewer, No. 1506 United States District Court, Eastern District of Louisiana, marked for identification as "P-12."

(13) Certified copy of act of sale from Gele et al. to Yazoo & Mississippi Valley Railroad Company, passed before W. H. Wright, November 22nd, 1898, registered C. O. B., 174, folio 59.

By Mr. LEMANN: I desire to state that the original record in the succession of Peter Conery vs. B. C. Correll, et als., is missing and cannot be found.

By Mr. CAGE: To offer No. 1, counsel for all of the defendants object on the ground that it is res inter alios acta, and one
31 of the defendants or warrantors are bound thereby.

By the COURT: The objection will be referred to the effect of the Record offered.

By Mr. CAGE: To offer No. 2, the same objection is made.

By the COURT: The same ruling.

By Mr. CAGE: Objection to offer No. 3 has already been made and referred to the effect.

The same objection is made to offer No. 4, as made to offers 1 and 2, that it is res inter alios acta, and none of the defendants or warrantors are bound thereby.

By the COURT: The same ruling.

By Mr. CAGE: The same objection is made to offer No. 5, as to Nos. 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection to offer No. 6, as to Nos. 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection to offer No. 7 as to Nos. 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection to offer No. 8 as to offers Nos. 1 and 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection to offer No. 9 as to Nos. 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection is made to offer No. 10, as to offers 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection is made to offer No. 11, as to Nos. 1 & 2.

By the COURT: The same ruling.

By Mr. CAGE: The same objection is made to No. 12 as to offers 1 & 2.

32 By the COURT: The same ruling.

LEO FELLMAN, being duly sworn on behalf of plaintiff by John Sbisa, Minute Clerk, testified as follows:

Direct examination by Mr. LEMANN:

Q. Your name is what?
A. Leo Fellman.
Q. You are a real estate dealer, Mr. Fellman?
A. Operator and agent.
Q. Are you familiar—have you ever seen square 150 which is the subject of the present suit?
A. I have.
Q. Are you familiar in a general way with the values of property in that neighborhood?
A. I am.
Q. What would you consider the value of a square of ground situated as square 150 is situated, to be?
A. About three thousand or four thousand dollars.
Q. Now, Mr. Fellman, you have observed that the Yazoo & Mississippi Valley Railroad Company has a track running through this property?
A. Yes, sir.
Q. In your opinion is the value of that square affected by the fact that the railroad company traverses the square, and is the value of that square less than it would be if the railroad tracks were adjoining the square and not on it?
A. No question about it, because the railroad company cuts diagonally across the square, and leaves two little triangles.
Q. Could you estimate the depreciation in the value of the square caused by the fact that the railroad runs across it?
A. Well, not very accurately.
33 Q. What would your estimate be?
A. I suppose it would reduce the value of those two triangles to about half what the square would be worth.
Q. It would reduce the value of those two triangles to about half what the square would be worth?
A. Yes, sir.
Q. You own considerable property in that neighborhood yourself?
A. I do, and my family owns considerable more.

By Mr. MORENO:

Q. On what do you base your statement that the crossing of the railroad depreciates the value of that property?
A. The remaining triangles would not sell for near as much as the whole square would sell for.
Q. You say that you know it would depreciate it, but you don't know how much?
A. I said not very accurately; I said it would depreciate it in my judgment about one-half.
Q. You mean that if that square were worth originally three

thousand dollars the crossing of a railroad would only make it worth fifteen hundred dollars?

A. About that.

Q. Could not you sell those two triangles to be used for factory purposes very well?

A. Hardly, they are too small.

Q. Do you know—have you an idea what that property was worth in 1882?

A. Yes.

Q. About how much was that property worth in 1882?

A. Very little.

By Mr. LEMANN: That is objected to as being irrelevant. I object to any evidence of the value of the square at any other time than the present time.

34 By Mr. MORENO: In our answer we have alleged that we went on this property in 1882, and any damages arising from our going on the property arose by our taking possession in 1882, and evidence as to the worth of the square in 1882 would be material in determining, if the railroad has to pay something, what it would have to pay.

By the COURT: I will refer that objection to the merits.

By Mr. MORENO:

Q. You say that it was worth very little?

A. Yes, sir.

By Mr. ORY:

Q. Have you actually seen the property that you are testifying about?

A. Yes, sir, many times.

Q. Do you know whether there are any buildings on it?

A. Yes, sir.

Q. What is the character of those buildings?

A. Shacks.

Q. Are they old or new?

A. Well, they have been there for some years to my knowledge, I know, but I could not say.

Q. What is their general appearance, that is being old or new.

A. The general appearance is of being old.

Q. Could you state to the court between what streets that property involved in this suit is?

A. I believe it is the square bounded by Melpomene & Thalia streets, Hagan Avenue and Clark streets.

Q. I now show you a plan of a number of squares in that neighborhood. Will you kindly point out to the court which of those squares is the property involved in this suit?

35 A. This one right here (indicating).

Q. It is bounded by what streets?

A. Melpomene and Thalia streets; Hagan Avenue—that is the

name; it is Clark street just now; the fact of the matter is, we own this property in here (indicating).

Q. What is that black line that you find delineated on that plan?

A. Running diagonally across it?

Q. Yes, sir.

A. That is the main line of the Yazoo & Mississippi Valley Railroad.

Q. It is what is intended for the track of the Yazoo & Mississippi Valley Railroad?

A. Yes, sir.

Q. Now, on which side, or rather on which portion of the square are the buildings on the property involved in this suit; can you state that to the court?

A. I think they are right there (indicating).

Q. On what front—fronting on Thalia street or Hagan Avenue?

A. I think it is there, the oil mill is situated here.

Q. It would be Thalia street then?

Q. It would be Thalia street then?

A. It would be Thalia street I believe, although I never have paid particular attention to it; but I have been out there twenty or thirty times in the past few months, and have occasion to go out there a good deal.

Q. The buildings are old, and you call them shacks.

A. Well, wooden buildings; I don't believe they have ever been painted; you know the general appearance of such structures.

Q. Can you state what is the size of that square from your own personal knowledge, without looking at anything at all?

A. I have never stepped it off, but I know the squares out there are more or less irregular; I imagine it is something about
36 two hundred feet, by two hundred and seventy five feet, or thereabouts.

Q. Well, now, is not that the usual size of the squares in that neighborhood?

A. Yes, the usual size, but as I say there are a great many irregular squares.

Q. Taking your figures, a square three hundred feet by two hundred feet in that neighborhood without anything at all on it is worth how much?

A. Three hundred by two hundred would be a small square.

Q. Three hundred by two hundred and seventy-five feet?

A. That would be worth, as I have said, three thousand to four thousand dollars.

Q. Without anything on it at all?

A. Yes.

Q. Now, that square with the track on it is worth less than a vacant square, is it?

A. Why, of course you sacrifice so much ground.

Q. Do you not know as a fact, Mr. Fellman, as a real estate operator, that all squares in the city of New Orleans on a trunk line to-day, are worth from fifteen to twenty thousand dollars?

A. You ask me do I know that?

Q. Yes.

A. I certainly do not.

Q. Is it not a fact that squares in this city that front on a trunk line, are worth more than if the square was away from the track?

A. A square on a railroad front could be used for no specific purpose without the railroad there, would, in my judgment be worth more if on the railroad front, but there are a great many sides to the question; a railroad track on Canal street, would not improve Canal street property.

Q. We are speaking of property in that neighborhood right now.

A. Squares in that neighborhood without a railroad track
37 fronting, not taking away any ground from the property would be increased in value simply by the existence of that railroad track.

Q. What would a piece of property be worth that had that advantage, say at an ordinary sized square, say three hundred by two hundred and seventy-five feet.

A. As I have said, three thousand to four thousand dollars; there are sales out in that neighborhood on that basis.

Q. Now, how long, and how far back do you remember the improvements on that property, can you state?

A. Seven or eight years.

Q. Could not those buildings have been there a much longer length of time and you not have noticed them?

A. I was not familiar with that ground further back than that; they may have been improved or altered since then; I could not say; I do not know of my own knowledge.

Q. Then, your recollection only runs that far back?

A. Absolutely.

Q. The buildings might have been on that ground a much longer time, and you would not be able to deny or affirm it in any way?

A. Certainly.

By Mr. CAGE:

Q. You are testifying to the value of three thousand or four thousand dollars as of to-day?

A. Yes, sir.

Q. This is 1910. What would you value that square—150 is it not?

A. Yes, that is the number on this plan.

Q. —in say 1897, being then bysected by the Yazoo & Mississippi Valley Railroad as now shown?

A. In 1897 it was no longer a square, was it? Just little triangles; the railroad went there in the eighties.

Q. Bysected——

A. The remaining portions of the square; that is the value, is it, the question to answer?

38 Q. Well, Mr. Fellman, you are a real estate man.

A. Yes, in 1897—you know how it is carrying ten years in your memory; I cannot remember exactly down to 1897; furthermore I was familiar with the ground thirteen years ago.

Q. How long have you known that track to be there?

A. Physically?

Q. Yes.

A. Just as I have said about seven or eight years; I think it was about 1903 that I had a survey back there; I am not altogether familiar with it.

Q. About seven years; well, what would you consider the value of that square, or the two remaining two triangles of that square when you first knew them in 1903, seven years ago?

A. Well, I tried to put a figure on it, but it would be impossible; it was not worth maybe more than a third or one-quarter—maybe one-third of what it is to-day.

Q. Seven years ago—you don't think it was worth more than one thousand dollars?

A. That would be my idea.

Q. Well, is it not a fact that back in 1897 those squares of ground out in that portion of the city of New Orleans had only a nominal value, a very small value?

A. Yes.

A. (cont'd). Is not that the value of it cut up in twenty lots, only a nominal value of $50.00 per lot?

Q. You think it was worth, the two triangles in 1897, were worth $100.00 a piece, making $200.00 for both of them; do you think they were worth that much back in 1897?

A. Yes, and possibly a little bit more.

Q. Try to fix an approximate value on them?

A. I have not an exact idea of just how large those triangles are; I think the railroad runs diagonally across and has the right of way of about 100 feet; that would be taking in somewhere be-
39 tween one-third and one-half of the square.

Q. So, you would guess somewhere about three hundred dollars in 1897 for those two triangles?

A. It would be purely a guess; I say three hundred or four hundred dollars as a guess.

By Mr. LEMLE:

Q. Mr. Fellman, you fix this value in 1897; assuming that the railroad built its main line across this property in 1882. What would you have to say as to its value as far back as that?

By Mr. LEMANN: Of course the same objection as heretofore made will apply.

By the COURT: With the same ruling.

A. In 1882; I was not familiar with it in those days, but the records show that the property was worth very little, and selling for very little. In fact there was no drainage and water rested on the land. I don't know that it did on this particular land, but in general it did out there.

Q. Now, Mr. Fellman, could you not give some figures or an approximate idea in figures in 1882 when the railroad built across?

A. It is very hard to say, Mr. Lemle, for this reason: Some property in that neighborhood in 1884 or 1885 was sold at auction, and

I think it went at only from a fourth to a fifth of its appraised value. In other words, nobody was going back there.

Q. Even at that we are trying to get some figures, so that if the court should adopt the conclusion that the railroad built across, and would have the right to expropriate in 1882, if it did not do it at that time, I am trying to ascertain the value that would have been fixed at that time, had it been expropriated?

A. Well, I will gladly give you all the information I have; I cannot go beyond what I know, and probably the best answer I can give you to that question is, that the piece adjoining this
40 belonged to my father, and in or about the year 1885 the railroad company paid him $100.00 for a right-of-way sixty feet wide.

By Mr. LEMANN:

Q. Mr. Fellman, this railroad track runs through this square, and not in front of it does it not?

A. It runs through the square leaving a triangle on either side.

By Mr. LEMLE: We have a blue print of it which I will offer in evidence in a moment.

By Mr. LEMANN: Plaintiff rests, reserving the right to introduce rebuttal evidence.

Reported by Allan R. Beary, Stenographer.

(Endorsed:) No. 87,850—Civil District Court, Division "A."—Mrs. Widow M. Brewer vs. Yazoo & Mississippi Valley Railroad Co., et al.—Plaintiff's testimony—Filed May 26/10. (Signed) John Sbisa, D'y C'k.

41 *Act of Sale in the Succession of the Late Henry Parish Conrey to George Brewer, Passed Before Thomas Layton, Notary Public, on June 9th, 1860; Recorded in Conveyance Office in This Parish, C. O. B. 83, Fo. 315; Marked for Identification "P-4; Offered in Evidence by Counsel for Plaintiff.*

Filed May 26th, 1910.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this ninth day of June, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America, the 84th.

Before me Thomas Layton, a Notary Public, in and for the said City of New Orleans, duly commissioned and sworn; and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. James Grimshaw, residing in this City, herein acting as Administrator duly appointed of the succession of the late Henry Parish Conrey, as appears by the proceedings held in the Second District Court of this City No. 16,229 of the docket of said Court;

Which said *appears* declared that by virtue & in confirmation of the adjudications made at the public sale by Camille E. Girardey, a duly licensed Auctioneer of this City, on the Second June instant at 12 o'clock M. and at the City Hotel on Common Street, between Camp & Magazine Streets; the whole by and in pursuance to an order of the Honorable the Judge of said Second District Court of New Orleans, dated the 3rd. day of May last 1860, as appears by the process verbal of said auctioneer annexed for reference to
42 an other act of even date herewith in this office.

He, the said Administrator does by these presents, and for the consideration hereinafter expressed, sell, convey, transfer, and deliver under all legal warranties, and with substitution and subrogation to all the rights of action and warranty which the said late Henry Parish Conrey had, and that his succession has or might have against all preceding vendors or proprietors;

Unto Mr. George Brewer, residing also in this City, hereto present and accepting purchasing for himself his heirs and assigns and acknowledging due possession thereof since & from the date of the sale at auction aforesaid.

No. 1. A portion of square of ground situated in the rear of the Fourth District of this City in the square bounded by Thalia, Melpomene & Violet Streets, and St. John Avenue, which square is designated by the No. 150, 17 Feby. 1846, Buisson, surveyor on the 17th. February, 1846, deposited for reference in the Fourth District of this City in the suit of Peter Conrey, Jr. & et — vs. V. C. Curell (No. 1966) of the Docket of said Court, a copy of which plan drawn by L. Biezinstein, Surveyor, dated the 20th. March last, (1860) is deposited in the office for reference and the portion of said square actually sold is the one comprised within St. John Avenue, Thalia, Melpomene Streets, and the lower line of Waldon's plantation.

2nd. Another portion of ground situated in the same District in the square designated by the No. one hundred & Fifty eight, bounded by Terpsichore, Melpomene & Violet Streets, & St. John Avenue, the whole as per above recited Plan of Buisson, and copy of said plan by L. Beizenstein, in which portion of said square actually sold is the one comprised within St. John Avenue, Melpomene, Street and Lower line of the Waldon's Plantation.

Together with all the appurtenances of said two portions of ground, rights, ways, privileges, customs or servitudes attached or any wise appertaining:

43 Which portions of ground belong to the said late Henry Parish Conrey for having inherited the same from Henry Parish agreeably to his testament dated the Twentieth — September 1842, duly probated in the surrogates Court of the State & County, of New York, as appears by a copy of said testament now exhibited to me — Notary, which copy is duly certified on the Second December 1859, by Edward C. West, Clerk of said Surrogates Court, and the said Henry Parish was decreed the owner of said property by a judgment rendered in the Fourth District Court of New Orleans on the Fourth November 1848, in said suit of Peter Conrey, Jr. & et — vs. V. C. Currell (No. 1966 of the Docket of said Court).

This sale pursuant to the one at auction aforesaid is made and accepted and in consideration of the price and sum of One hundred and Five Dollars ($105) say ($80) for the portion of square No. 150; and twenty-five Dollars ($25) for the portion of square No. 158 the whole payable twelve months after said adjudication at auction;

Wherefore the said purchaser has subscribed to the order of Mr. Andrew Oliver Jackson, who has endorsed the same, a promissory note for the sum of One Hundred & Five Dollars ($105) dated the Second June instant, being the date of the sale at auction aforesaid payable twelve months after date, with the interest at the rate of six per cent per annum from date to maturity and if not then punctually paid to bear a penal interest at the rate of Eight per cent per annum from maturity until paid.

Which note after having been signed and paragraphed "Ne Varietur" by me Notary to indentify it which these presents was delivered to the said administrator, who hereby acknowledges the receipt thereof;

And in order to better secure the punctual payment of said note with all interest thereon as aforesaid the hereinabove described and conveyed property is and hereby remains specially bound mortgaged & hypothecated in favor of the vendor or of whomsoever may be the holder of said note; the purchaser hereby binding himself not to sell mortgage, nor alienate in any manner whatever, the said portion of ground nor any part thereof, to the prejudice of this mortgage, and hereby confessing judgment for the amount of said note & interest to be paid as aforesaid.

44

To have and hold the said described conveyed portions of ground, unto the said George Brewer his heirs and assigns, to their proper use, behoof and benefit forever by virtue hereof.

By reference to the hereunto annexed certificate of the Recorder of Mortgages in and for this City and Parish, dated the Sixth June instant and annexed to another act of sale herewith in this City, it appears that there is no mortgages whatever standing in the name of the said late Henry Parish Conrey and recorded against the hereinabove described and conveyed property;

The said administrator here declared that there are no taxes whatsoever due on said conveyed property; and binds himself unto the said purchaser to warrant and defend him, his heirs or assigns against all claims relative thereto, which declaration the said purchaser acknowledges himself fully satisfied exonerating the notary undersigned from any responsibility in the premises.

Thus done and passed at the City of New Orleans, aforesaid, in my (The Notary's) office, the day, month and year first before written, in the presence of Messrs. Charles Laterriere & Felix De-Armas, competent witnesses residing in this City, who have hereunto signed their names with the said appear-s and me, the Notary after due reading.

(Signed) GEORGE BREWER.
JAMES GRIMSHAW, *Administrator.*
F. DE ARMAS.
CHAS. LATERRIERE.
THOMAS LAYTON, *Notary Public.*

A true copy from the original.
[SEAL.] (Signed) THOMAS LAYTON,
Notary Public.

45 *Marriage Contract (Certified Copy) Between George Brewer and Mrs. Annie E. Gallagher, by Notarial Act Before J. J. Barnett, Notary Public, June 13th, 1874; Recorded in M. O. B. 128, Fo. 557; Marked for Indentification "P-5." Offered in Evidence by Counsel for Plaintiff.*

Filed May 26th, 1910.

Be it known that on this 13th, day of June, in the year of our Lord One Thousand Eight Hundred and Seventy-four, before me John J. Barnett, a Notary Public, in and for the Parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared George Brewer of this City, of lawful age, and Miss Annie Eliza Gallagher, also of this City and of lawful age, which said appearers severally declared, that they had
46 promised and convenanted to enter into the bonds of matrimony under the laws and regulations of this State, they have in consequence *naturally* agreed before the celebration of said contemplated marriage, to enter into a formal marriage contract, in order to establish the civil rules and regulations which shall govern the said marriage.

Article First.

Wherefore in consideration of the premises, the said parties do hereby agree, determine and contract, that the said intended husband and wife shall be separate in property and estate and that all property of whatever description now belonging to or which hereafter may be acquired by either shall be and continue under the separate and exclusive administration of said party respectively, without any exception or reservation whatever, and to this end and purpose the said parties respectively renounce all laws and statutes of the State, establishing a community of acquets and gains between Husband and Wife.

Article Second.

The said intended wife brings into marriage and settles upon herself as paraphernal property:

First. A certain lot of ground with the buildings and improvements thereon, situated in the Third District of the City of New Orleans, designated by the Number Twenty-three of square No. Eight comprised within Enghein, Craps, (Now Burgundy), Port and Greatman (Now Dauphine) Streets, on a plan drawn by C. A. Pilie, Deputy Surveyor of the First Municipality, on the 21st day of November 1844, and deposited in the office of Jules Mossy, Notary; which said lot measures, American measure, twenty-nine feet, eleven inches and three lines on Enghein Street, by One Hundred and

Thirty feet, three inches and six lines in depth between parallel lines.

47 Acquired by Purchase from the Succession of Mary Ann Brewer and George Brewer, on the 22nd of April, 1874, and registered C. O. B. 104, Fo. 303, act before Wm. H. Seymour, Notary in this City, Valued at the sum of Six Hundred Dollars..... $600.00

Secondly. The sum of Six Hundred and Thirty Dollars ($630) in ready lawful money of those United States of America which was counted and delivered in presence of the undersigned Notary and witnesses at the time of signing these presents by the said intended wife to the said intended husband, who acknowledges the receipt thereof and has taken charge of the same for account of his said intended wife..... $630.00

Thirdly. Household furniture and piano valued at Eight Hundred Dollars $800.00

Fourthly. Five ten per cent City Bonds of Fifty Dollars ($50) each, Nos. 753, 2888, 2892, 2901 and 2926 exhibited to me Notary and said witnesses valued at Two Hundred and Fifty Dollars..... $250.00

Fifthly. Ten City School certificates each for $83.35, for months of Nov. and Dec. 1873, and Jan., Feb. M'ch, April, May, June and July and Aug., 1874, evidenced by certificates of Board School directors, City N. O., dated June 10th, 1874, and exhibited to me Notary and said witnesses valued at..... $833.50

Making a total sum of Three Thousand one hundred and thirteen and 50/100 Dollars..... $3,113.50

Thus done and passed at New Orleans aforesaid, the day, month and year first above written and in presence of William Garrison and George P. Bowers, competent witnesses who hereunto sign their names with said appearers and me, Notary, after reading of this act.

48 Nine words erased and thirteen words interlined, approved before signing.

GEORGE BREWER.
A. E. GALLAGHER.
GEORGE P. BOWERS.
WILLIAM GARRISON.
JOHN J. BARNETT,
Notary Public.

STATE OF LOUISIANA,
Parish of Orleans:

I the undersigned Peter Stifft, Custodian of Notarial records in and for the Parish of Orleans and State of La., do hereby Certify that the above and foregoing is a true and correct City of the original on file and of record in my office.

Witness my hand and the official seal, this 5th day of March, 1910.

(Signed) PETER STIFFT,
[SEAL.] *Custodian Notarial Records.*

Adjudication of Bankruptcy (Certified Copy) of George Brewer on December 28th, 1875, in the Proceedings No. 1506, on the Docket of the United States Court for the Eastern District of Louisiana. Marked for Identification "P-6." Offered in Evidence By Counsel for Plaintiff.

Filed May 26th, 1910.

Adjudication of Bankruptcy Upon Debtor's Petition.

49 The District Court of the United States for the District of Louisiana.

In Bankruptcy.

In the Matter of GEORGE BREWER, By Whom a Petition for Adjudication in Bankruptcy was Filed on the 28th Day of December, A. D. 1875, in said Court.

At New Orleans in said District on the 28th day of December, 1875, before C. S. Kellogg, One of the Registers of said Court in Bankruptcy, I, the undersigned, a register of said Court in Bankruptcy upon good proof before me, C. S. Kellogg, taken, do find that the said meaning of the act of Congress entitled, an Act to establish a Uniform System of Bankruptcy throughout the United States," approved March 2nd, 1867, and I do hereby declare and adjudge him a Bankrupt accordingly.

(Signed) C. S. KELLOGG,
Register in Bankruptcy.

CLERK'S OFFICE:

I, Frank H. Mortimer, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify the above and foregoing to be a true and correct copy of the original on file and record in my office in the above entitled and numbered cause.

50 Witness my hand, and the seal of the said Court, at New Orleans, La., this 24th, day of February, A. D. 1910.

[SEAL.] FRANK H. MORTIMER, *Clerk.*

Appointment of Charles H. Reed as Assignee in Bankruptcy of George Brewer, and Transfer to the said Charles H. Reed, Assignee of All the Estate, Real or Personal, of the said George Brewer, Bankrupt, Dated February 15th, 1876. "Signed C. S. Kellogg, Register in Bankruptcy." Marked for Identification "P-7." Offered in Evidence By Counsel for Plaintiff.

Filed May 26th, 1910.

Assignment of Bankrupt's Effects.

In the District Court of the United States for the District of Louisiana.

In Bankruptcy.

In the Matter of GEORGE BREWER, Bankrupt.

DISTRICT OF LOUISIANA, *ss:*

Know all men by these presents, That Charles H. Reed, of the City of ——, in the Parish of Orleans, and State of Louisiana, in said District, has been duly appointed assignee in said matter,

Now, therefore, I, C. S. Kellogg, Register in Bankruptcy of said District, by virtue of the Authority vested in me by the
51 14th, Section of an Act of Congresss, entitled, "An Act to establish a uniform system of Bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Charles H. Reed, assignee as aforesaid, all of the estate, real and personal, of the said George Brewer, Bankrupt, aforesaid, including all the property of whatever kind of which he is possessed, or in which he was interested or entitled to have on the 28th day of December, A. D. 1875, with all his debts, books and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said Charles H. Reed, and his heirs forever, in Trust nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof, I, the said Register, have hereunto set my hand, and caused the Seal of said Court to be affixed this 15th day of January A. D., 1876.

(Signed) C. S. KELLOGG,
[SEAL.] *Register in Bankruptcy.*

CLERK'S OFFICE:

I, Frank H. Mortimer, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify the above and foregoing to be a true and correct copy of the original on

file and of record in my office in the above entitled and numbered case.

Witness my hand, and the seal of the said Court at New
52 Orleans, La., this 24th day of February A. D., 1910.

(Signed) FRANK H. MORTIMER,
[SEAL.] *Clerk.*

Act of Sale By Charles H. Reed, Assignee of the Estate of George Brewer, Bankrupt to Mrs. Annie E. Gallagher, Wife of George Brewer, Passed Before William H. Seymour, Notary Public, on November 23rd, 1876, in C. O. B. 108, Folio 875. Marked for Identification "P-8." Offered in Evidence By Counsel for Plaintiff.

Filed May 26th, 1910.

UNITED STATES OF AMERICA,
State of Louisiana,
City of New Orleans:

Be it remembered that on this Twenty third day of the month of November, in the year of our Lord the one thousand eight hundred and seventy sixth, and of the Independence of the United States of America the one hundred and first, before me, William H. Seymour, a Notary Public duly commisisoned and sworn for the Parish of Orleans and City of New Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared, Charles H. Reed, of this City, herein acting in his capacity of Assignee of the Estate of George Brewer, a Bankrupt, as per No. 1506 of the docket of the U. S. District Court for the District of Louisiana, sitting in Bankruptcy,

Who declared that in confirmation of the sale at auction he
53 caused to be made by Andrew H. Pons, a duly licensed auctioneer in this City, on the 17th June last 1876, at the Merchants and Auctioneers Exchange on Royal between Canal and Customhouse Streets in this City, by virtue of an order from the Honorable E. C. Billings, Judge of said United States District Court for the District of Louisiana, dated the 25th, of April last (1876) and rendered in the matter of said Bankruptcy at which public sale the property hereinafter described was adjudicated to Mrs. Annie E. Gallagher, of lawful age, wife separate in property of said George Brewer herein duly authorized and assisted by her said husband, she being the last and highest bidder thereon, for the sum of $8,00, it being the highest price, as the whole will more fully appear by reference to the process verbal of said auctioneer.

He does by these presents grant, bargain, sell, convey, transfer, assign, set over and deliver all the right, title and *and* interest, claim, ownership and demand which are vested in him as Assignee to the property hereinafter described, unto the said Mrs. Annie E. Brewer, of this City, here present, accepting and purchasing for herself, her

heirs and assigns and acknowledging delivery and possession thereof, the following described properties:

1. Two certain pieces or portion of ground with all the improvements thereon, rights, ways, etc., situate in Metarieville, Seventh District of this City, between the Town of Bath and the New Orleans Canal, designated by the Nos. Thirty and Sixty six, on a plan drawn by J. A. Guerard, Deputy Surveyor General, on the 20th, of March, 1837, and deposited in the office of the late Wm. Boswell, Notary. No. Thirty contains four lots measuring together three hundred and nineteen feet on Carrollton Street, same front on
54 the line dividing it from the Beaulieu property, seventy one feet six inches on Hyacinth Street, and seventy four feet, seven inches on Jessamine Street, and No. Sixty six contains ten lots and measure three hundred and nineteen feet front on Carrollton Street, the same front on the line dividing it from the Beaulieu property, one hundred and eighteen feet, three inches front on Cedar Street, and one hundred and twenty one feet, four inches on Plum Street.

Being the same property which the said George Brewer acquired by purchase from the Succession of Thomas Caron and wife, by an act passed before Jos. Cahn, Notary, in this City, on the 5th May, 1859.

2. A certain piece or portion of ground, with all the improvements thereon, rights, ways, etc., situate in Metarieville, Seventh District, of this City, between the Town of Bath and the New Orleans Canal, designated by the Number 131, on a plan drawn by J. A. Guerard, Deputy Surveyor General, on the 20th of March, 1837, and deposited in the office of the late Wm. Boswell, then a Notary Public, in this City, said piece or portion of ground containing fifteen lots.

Being the same property which the said George Brewer acquired by purchase from George Alfred Freret by an act passed before Jos. Cahn, Notary in this City, on the 9th day of May, 1859.

3. A portion of ground situated in the rear of the Fourth District of this City, in the square bounded by Thalia, Melpomene and Violet Streets, and St. John Avenue, which portion is that of a square designated by the Number One Hundred and Fifty on a plan drawn by Benjamin Buisson Surveyor, on the Seventeenth February 1846, deposited for reference in the Fourth District Court of this City, in the suit of Peter Conrey, Jr., et als. vs. C. V.
55 Curell, No. 1966 of the docket of said Court, and the portion of said square actually sold is the one comprised within St. John Avenue, Thalia and Melpomene Streets and the lower line of Waldon's Plantation with all the rights, ways, etc.

4. Another portion of ground, situated in the same district, in the square designated by the No. One Hundred and Fifty eight, bounded by Terpsichore, Melpomene and Voilet Streets, and St. John Avenue, the whole as per the above recited plan of Buisson which portion of ground actually sold *in* the one comprised within St John Avenue, Melpomene Street and the lower line of Waldon's Plantation.

Which portion of ground the said George Brewer acquired by purchase from the Succ., of Henry P. Conrey by act before Thomas Layton, Notary in this city on the 9th, June 1860.

To have and to hold the said property with the appurtenances, thereof, unto the said present purchaser, her heirs and assigns forever, in full ownership, so far as the title is vested in him, Charles H. Reed, assignee, and also with the full and complete substitution and subrogation to all his rights and actions in warranty against all preceding vendors or possessors of said property.

And the said Assignee acting as the officer of the Court conveys only such title as is in him vested by the aforesaid order or Decree of Court and by the assignment in Bankruptcy.

The taxes not having been paid, and the Assignee not knowing how much there may be due therefor, the present purchaser hereby binds and obligates himself to pay all taxes that are or may be due on said presently sold properties.

This sale is made and accepted pursuant to the said adjudication for and in consideration of the price and sum of $8.00 which has been paid in ready money by the said purchaser to the said Assignee, the receipts whereof he hereby acknowledges and for
56 which he grants full acquittance and discharge in his said capacity.

The purchaser here dispensed with the production from the Recorder of Mortgages of a certificate to show the mortgages if any which exist on the said property in the name of said bankrupt as is therein required by Articles 3354 of the Civil Code of this State.

By the annexed certificate from the Register of Conveyance from this Parish and City it will appear that, said properties have not been previously alienated by the said George Brewer, and which certificate bears even date herewith.

Thus done and passed in my office, in the city of New Orleans, on the day, month and year first above written, in the presence of Thomas Killaly and Peter J. Kramer, competent witnesses residing in this City, who have signed these presents with said appearers and me Notary after due hearing thereof.

CHARLES H. REED, *Assignee.*
A. E. BREWER.
GEORGE BREWER.

THOMAS KILLALY.
PETER J. KRAMER.
WM. H. SEYMOUR, *N. P.*

Registered in C. O. B. 108, Fol. 875, Nov. 24th, 1876.
(Signed) C. B. FISH, *Register.*

STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Wm. H. Seymour, Notary Public, in and for this Parish of Orleans, and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

57 Witness my hand and official seal this 9th day of March, 1910.

(Signed) WM. H. SEYMOUR,
[SEAL.] *Not. Pub., Parish of Orleans, La.*

Process Verbal (Certified Copy) by A. H. Pons, Auctioneer, Dated June 18th, 1876. Annexed to an Act of Sale Before Wm. H. Seymour, Notary Public, on November 23rd, 1876. Marked for Identification "P-9." Offered in Evidence by Counsel for Plaintiff.

Filed May 26th, 1910.

Proces Verbal.

Bankruptcy of GEORGE BREWER.

UNITED STATES COURT,
District of Louisiana:

No. 1506.

Sold this day, Saturday June 17, 1876, at 12 M., at the Meh. & Aucts., Exchange, on Royal Street between Canal and Customhouse Streets, by virtue of an order of the Hon. E. C. Billings, Judge of the U. S. Court for the Dist. of La., signed April 25th, 1876, the property, viz:

1st. 2 Pieces of ground in Metarieville, Jefferson Parish, between Town of Bath and the New Orleans Canal, known as Nos. 30 and 66. No. 30 containing four lots and 66 ten lots as per plan of one Guerard, 20th March, 1837, in office of E. Barnett, Notary.

2nd. A second piece of ground near aforesaid, containing 15 lots as per said plan.

3rd. A portion of square No. 150, rear of 4th. Dist., this City, bounded by Thalia, Melpomene, St. John Avenue, and Violet
58 Sts., as per plan of L. Reizenstien, 25th. of March 1860, in office of T. Layton late Notary. Advertisement was made in the official journal, the N. O. Republican, under date May 23, 27, June 3rd, 10, and 17th, and after due trial and public outcry the said property was adjudicated to one Mrs. Annie E. Brewer, for the total price and sum of Eight Dollars paid cash on the spot as follows: The property called 1st. $3.00; the 2nd. $2.50; the 3rd. $2.50 with the express provision and condition that the assignee, acting only as officer of the Court, conveys only such title as is in him vested by the assignment in bankruptcy, and that these several properties sold subject to all and any incumbrance that may exist, and that act of sale be made by Wm. H. Seymour, Esq., Notary Public, purchaser's expense.

A. H. PONS,
Auctioneer.

Office 90 Camp Street.
New Orleans, June 17th, 1876.

STATE OF LOUISIANA,
Parish Orleans:

I, the undersigned Wm. H. Seymour, Notary Public, in and for the Parish of Orleans, and State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and official seal this 9th, day of March, 1910.

(Signed) WM. H. SEYMOUR,
[SEAL.] *Not. Pub., Parish of Orleans, La.*

Docket Entries in the Succession of Henry Parish Conrey, No. 16,229 of the Docket of the Second District Court. Marked for Identification "P-9."

Filed July 21st, 1910.

Copy of Docket No. 7—Second District Court.

59

No. 16229.

Succession of HENRY PARISH CONREY.

A. Robert.

1859.		
Dec. 29	Fg. pet'n, aff't & order	.60
	Notices to Paper	1.00
1860.		
Jan. 11.	Fg. Pet'n, Aff't & Order App. ad	2.35
" 18.	Oath of Ad'r & Letters	3.00
" 24.	Oath of Appraisers	.75
" "	Fg. Pet'n, Order for Inv'y, &c	1.85
" "	Copy " Notary	1.50
" "	1 Copy & 1 Comm. P-h. Jr	2.50
" 26.	Oath of Appraisers	.75
Feb. 3.	Fg. Pet'n, Order Opp'g Att'y, ab. hs	1.60
	4 Copies for service	2.00
M'ch 5.	Fg. Pet'n, Inv'y, & Order	.45
" 13.	(Can't make out) Bond	2.10
" 14.	Fg. Pet'n, & Order for Sale	.60
	Copy to Auct'r	1.25
May 3.	Fg. Pet'n, & Order for sale and copy	1.35
June 18.	Fg. Proces verbal Auct'n	.10
	By Cash	24.75

P. S. WILTZ.

Inventory (Certified Copy) Taken in the Succession of Henry Parish Conrey, by Thomas Layton, Notary, Dated February 9th, 1860, and Marked for Identification "P-11." Offered in Evidence by Counsel for Plaintiff.

Filed May 26th, 1910.

60 STATE OF LOUISIANA,
City of New Orleans:

No. 43.

FEBRUARY 9TH, 1860.

Inventory of the Succession of the Late Henry Parish Conrey.

Be it known that on this ninth day of February, in the year of Our Lord, One Thousand Eight Hundred and Sixty, and of the Independence of the United States of America the 84th, at Five O'clock P. M.

In obedience to and in conformity with an order from the Honorable the Second District Court of New Orleans, dated the 24th January, last past (1860) rendered in the petition of James Grimshaw of this City, Administrator of the Succession of the late Henry Parish Conrey, showing that the said Succession is possessed of a certain landed property situate both in this City of New Orleans and in the Parish of Jefferson and that it is necessary that an inventory of said property be made to proceed to the settlement of this Succession according to law, and to enable said petitioner to give his bond of office.—Wherefore petitioner prayed that it may please said Honorable Court to order that an inventory of the property of the said Succession situate in this City be made by a Notary Public, that two appraisers be appointed to assess the same; said inventory be made in presence of all parties interested; said petitioner also praying that a commission do also issue to the recorder of the Parish of Jefferson to Inventory there the property of the Succession situated in said Parish of Jefferson.

And thereupon was issued the order aforesaid ordering that said Inventory prayed for be made by Thomas Layton, the Undersigned Notary, in the presence of all parties interested or them duly called and that G. Robert and F. J. Laizer be appointed & Sworn as
61 appraisers to value the property to be inventoried. And that a commission directed to the Parish Recorder of the Parish of Jefferson authorizing him to take Inventory of the property situated in his Parish (of which both petition and order, a duly certified copy is hereunto annexed for reference).

Now be it Known that on the day & at the hour herein before First written; due previous notice having been giving in writing by me, Notary of the place and time of taking said Inventory, to-wit: To James Grimshaw Administrator of said Succession: Octave Morel duly appointed Attorney to represent the absent heirs of said

late Henry Parish Conrey, and to G. Robert & F. J. Laizer, Appraisers, (Which notice were duly served on them by Felix De Armas, one of the undersigned witnesses) before me, Thomas Layton, a Notary Public, in and for this City of New Orleans, aforesaid, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned. Personally came and appeared:

1st. Mr. James Grimshaw, of this City duly appointed Administrator of the Succession of the late Henry Parish Conrey.

2nd. Mr. Octave Morel, of this City duly appointed Attorney, to represent the absent heirs of the said late H. P. Conrey.

3rd. And Messrs. G. Robert & J. Laizer, of this City, duly appointed & Sworn by the said Second District Court, to value the property of said Succession.

And forthwith, we proceeded to take a faithful inventory & appraisement of the property Real & Personal right, claim & credits, belonging to the Succession of the said late Henry Parish Conrey, such as the same shall be represented or declared by the James Grinshaw, Administrator as aforesaid, & shall be valued by the said appraisers, to-wit:—

62 Landed Property.

Ten squares of ground & Two portion- of squares of ground situated in the Fourth District of this City by the Nos. One Hundred and Forty five, One Hundred & Forty six, One Hundred and Forty seven, One Hundred Forty eight, One Hundred and forty nine, One Hundred and fifty, One Hundred and Fifty three, One Hundred and Fifty-four, One Hundred and Fifty five, One Hundred and Fifty six, One Hundred and Fifty seven and One Hundred Fifty eight, on a plan drawn by Benjamin Buisson, Surveyor on the 17th February 1846 deposited for reference in the Fourth District Court of this City in the suit of Peter Conrey, Jr., et als., vs. V. C. Curell (being No. 1966 of the docket of said Court, according to which plan the said squares & portions of squares measure as follows, viz.:

1st. Said square No. One Hundred and Forty five is comprised within Thalia, Melpomene, Fifth & Fourth Streets & Measure Two Hundred & Ninety feet five inches & Four Lines front on Both Melpomene and Thalia Streets, & Two Hundred & Twenty Three feet nine inches on both Fifth & Fourth Streets; which square of ground the said appraisers have valued at the sum of Four Hundred Dollars $400

2nd. Said Square No. One Hundred and Forty six, comprised within Thalia, Melpomene, Fourth & Vanburen Streets, measures Two hundred & Ninety feet five inches & Four lines front on both Melpomene & Thalia Streets, & Two Hundred and twenty three feet nine inches front on both Fourth & Vanburen Streets; which said square has also been appraised by said appraisers at the sum of Four Hundred Dollars $400

3rd. Said square No. One Hundred and forty seven, comprised within Thalia, Melpomene, Van Buren & Third Streets, meas-
63 ures Two Hundred and Ten feet seven inches & Two lines front on both Thalia & Melpomene Streets, & two hundred & twenty three feet nine inches on both Van Buren & Third Streets, which *is* square is valued by said appraisers at the sum of Four Hundred Dollars $400

4th. Said square No. One Hundred and Forty-eight, comprised within Thalia, Melpomene, Third & Second Streets, measures Three Hundred & twelve feet, nine inches & four lines front on both Thalia & Melpomene & Two Hundred & Twenty three feet nine inches front on both Third & Second Streets; and valued by said appraisers at the sum of Four Hundred Dollars... $400

5th. Said square No. One Hundred and Forty nine, comprised within Thalia, Melpomene & Second Streets, & St. John Ave. measures Three Hundred & twelve feet nine inches & Four lines front on both Thalia & Melpomene Streets, & twenty three feet nine inches front on both Second & St. John Ave. and valued also by said appraisers at the sum of Four Hundred Dollars $400

6th. Portion of square No. One Hundred & Fifty comprised within Thalia & Melpomene Streets & St. John Avenue & Violet Street; said portion of square having no admeasurement on said plan is the one comprised within St. John Avenue, Thalia Street, Melpomene Street and the lower line of Waldon's Plantation; and valued by said appraisers at the sum of Two Hundred Dollars $200

7th. Said square One Hundred and Fifty Three, comprised within Terpsichore, Melpomene, Fifth & Fourth Street-, measures two hundred & Ninety feet, five inches & four lines front on both Terpsichore & Melpomene Streets & Two hundred & Twenty three feet, nine inches front on both Fifth & Fourth Streets; and
64 valued by said appraisers at the sum of Four Hundred Dollars $400

8th. Said square No. One Hundred and Fifty four comprised within Terpsichore, Melpomene Fourth & Van Buren Streets, measures two hundred & Ninety feet five inches & four lines front on both Terpsichore & Melpomene Streets, & two hundred & Twenty three feet nine inches front on both Fourth & Van Buren Street-, and valued by said appraisers at the sum of Four Hundred Dollars $400

9th. Said square No. One Hundred and Fifty five, comprised within Terpsichore, Melpomene, Van Buren & Third Streets, measures Two Hundred & Ten Feet seven inches & Two Lines front on both Terpsichore & Melpomene Streets, & Two Hundred & Twenty three feet nine inches front on both Van Buren & Third Streets; valued by said appraisers at the sum of Four Hundred Dollars $400

10th. Said square No. One Hundred & Fifty Six comprised within Terpsichore, Melpomene, Third & Second Streets, measures Three Hundred and twelve feet, nine inches & four lines front on both Terpsichore & Melpomene Streets, and two hundred and twenty three feet nine inches front on both Third & Second Streets, and valued by said appraisers at the sum of Four Hundred Dollars $400

11th. Said square No. One Hundred and Fifty Seven, comprised within Terpsichore, Melpomene & Second Streets, and St. John Avenue, measures Three Hundred & Twelve feet nine inches & Four lines front on both Terpsichore & Melpomene Streets & Two Hundred & Twenty three feet nine inches on both Second Street & St. John Avenue and valued by said appraisers at the sum of Four Hundred Dollars $400

12th. And portion of square No. One Hundred and Fifty
65 eight comprised with Terpsichore, Melpomene & Violet Streets, & St. John Ave., said portion of square having no admeasurement on said plan is the one comprised within St. John Avenue, Melpomene Street & the Lower Line of Waldon's Plantation; and valued by said appraisers at the sum of Fifty Dollars ..... $ 50

Which Ten square & portion of squares of ground belong to the said late Henry Parish Conrey for having inherited the same from Henry Parish agreeably to his will dated the — duly probated in the Surrogates Court of the City of New York, State of New York, and the said Henry Parish was decreed the owner of said property by a judgment rendered in the Fourth District Court of New Orleans, on the 4th November 1848, in the suit of Peter Conrey, Jr., et al. vs. N. C. Currell (being No. 1966 of the docket of said Court:

And the said Administrator having now declared that he knows of no other property whatsoever belonging to said Succession situate in this Parish.

We have closed the present inventory giving an appraised amount of four thousand two hundred & fifty dollars $4,250

And there being no other property to be inventoried we have closed these presents, at the City of New Orleans, in my, the Notary's office, the day & year first above written, in the presence of Messrs. Charles Laterriere & Felix De Armas witnesses residing in the said City who hereunto sign their names with said appears & me Notary after

(Original Signed) JAMES GRIMSHAW,
OCTAVE MOREL,
Att'y for Abst. Heirs.
THOS. LAYTON, *Not. Pub.*

F. J. LAIZER,
G. ROBERT.
CHAS. LATERRIERE.
F. DE ARMAS.

66 STATE OF LOUISIANA,
Parish of Orleans:

I, the undersigned, Peter Stifft, Custodian of Notarial Records in and for the State of Louisiana do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

Witness my hand and official seal.

This 4th day of March, 1910.

(Signed) PETER STIFFT.
[SEAL.] *Custodian of Notarial Records.*

Act of Sale from Gele et al. to Yazoo & Mississippi Valley Railroad Company, Passed Before W. H. Wright, November 22nd, 1898. Registered in C. O. B. 174, Folio 59. Offered in Evidence by Counsel for Plaintiff.

Filed April 7th, 1910.

STATE OF LOUISIANA,
Parish of Orleans:

Office of the Register of Conveyance.

E. P. Brandao, Register.

By Act before W. H. Wright, N. P. November 22, 1898.
JEAN MARIE GELE.
ETIENNE GELE.
WILLIAM LATERRIERE.

Sold Unto Yazoo & Mississippi Valley Railroad Company.

Piece or portion of ground: etc. 6th, District, square Hagan Avenue, Melpomene, Clark & Thalia Streets, square No. 150 and measures as follows, commencing corner of Hagan Avenue & Melpomene Streets, portion measures 223' 9" front on Hagan Avenue, up to the corner of Thalia Street, thence at a depth along side Thalia
67 Street, of 35' running towards Clark Street, thence on a line having a curve of 4 degrees and running towards Clark Street and reaching to Clark St. at a point on said Clark Street 83' 6" distant from the corner of Clark & Melpomene Street, thence along said Clark Street, at a distance of 83' 6" up to the corner of Melpomene Street, and thence at a depth and front on Melpomene St., *and thence a depth and front on Melpomene Street* of 227' 7" up to the point of beginning at the corner of Melpomene St. and Hagan Avenue.

Acquired March 31, 1897 C. O. B. 163 fol. 447.
Reg. Nov. 23, 1898.

JOHN E. STANLEY, *Register.*

I the undersigned Register, of Conveyance in and for the Parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of the inscription made in this office on Nov. 23rd, 1898, in book 174 folio 59.

New Orleans, Mar. 24, 1910.

(Signed) W. E. CONNELLY,
Register of Conveyance.

MAR. 24, 1910.

Conveyance Office.

Fee Sixty cents.
Received payment.
(Signed) W. E. CONNELLY.

STATE OF LOUISIANA:

Civil District Court, Division "A."

No. 87850.

Mrs. WIDOW M. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Testimony and Notes of Evidence Taken in Open Court, Before the Hon. T. C. W. Ellis, Judge Presiding, on the 7th Day
68 *of April, A. D. 1910, on Behalf of Etienne Gele and William Laferriere.*

Appearances:

For the plaintiff: J. M. Lapeyre Esq., and Messrs. Hall, Monroe & Lemann.

For Yazoo & Mississippi Valley Railroad Co: Messrs. Gus Lemle and A. A. Monroe.

For Etienne Gele et al., and William Laferriere: Benjamin Ory, Esq.

For George Babcock et al.: Messrs. W. W. Wright and G. T. Beauregard.

For Bernard Recourt: Hugh C. Cage, Esq.

Index.

Scott Douglas.....page 2
W. A. Lawler.....page 6
Val J. Flanagan.....page 10
Gaspar Petrie.....page 13
Benjamin Ory.....page 20

SCOTT DOUGLAS, being duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. ORY:

Q. Where do you reside?
A. On Thalia Street between Hagan Avenue and Clark Street.
Q. Do you know the other street?
69 A. Melpomene, yes, sir.
Q. How long have you lived there?
A. I built there in the Fall of 1896.
Q. Whose tenant are you?
A. Mr. Gele's—Mrs. Gele, now.
Q. How long have you been on that property?
A. Well, it would be fifteen years this coming October.
Q. You are still there?
A. Yes, I am there yet.
Q. Do you know the number of that square?
A. No, sir, I don't know the number of it.
Q. Is there a railroad track on that square?
A. Yes, sir, the Yazoo & Mississippi Valley.
Q. How long has that track been there?
A. Well, it was there when I went there.
Q. When did you go there?
A. Well, in the Fall of 1896, I built there.
Q. It was there then?
A. Yes, they made lots of repairs on it though, since I was there.
Q. You are between the railroad track and Thalia Street?
A. Between the railroad track and Clark Street, behind; Thalia Street runs right here, and the Illinois Central—there is a switch between me and Thalia Street, and the Oil Mill.
Q. You have been there since 1896?
A. Yes, sir, in the Fall of that year.
Q. Do you know old man Jean Marie Gele?
A. Yes.
Q. Was he the owner to whom you paid rent?
A. Yes.
70 Q. Who do you pay rent now to?
A. To her son-in-law, Mr. Petrie.

Examination by Mr. LEMANN:

Q. How did you happen to go on this land and build there in 1896?
A. I went to Mr. Gele and got permission from him.
Q. You got permission from him?
A. Yes sir.
Q. You went to him before you went on there?
A. Yes sir.
Q. And got permission to do what?
A. To build there.
Q. How much did you pay him?

A. I did pay him by the year, twelve dollars per year.
Q. You paid him $12.00 per year?
A. Yes, sir, for the land.
Q. You paid him yearly or monthly?
A. Every year.
Q. Then this building on this property belongs to you?
A. Yes, sir.
Q. Did you take any receipts for your payments?
A. Yes, sir.
Q. Where are those receipts?
A. I got some with me, and got more home.
Q. Where are they all? Those you have here, and those at home; are they all?
A. I have got some put away at home with my papers, and I got some too here; the rest my daughter has got.
Q. Where are those you have got with you?
A. I got some here (here they are).
Q. Those that you have here, the first is January 1st, 1909; then there is one for May 1st, 1909; one for October 1st, 1909,
71 and one for July 1st, 1909; are those all that you have?
A. No sir. I have got some more.
Q. Those are all you have here?
A. Yes.
Q. Will you produce the others?
A. I can, yes, sir.

By Mr. LEMLE: You will undertake to get them, Mr. Ory?
By Mr. ORY: I do not. I have been trying to get them to bring them to me. You have my permission.

By Mr. LEMLE:

Q. Will you produce them?
A. I can do it.
Q. Will you bring them to me?
A. I cannot get them this evening.
Q. You do not have to get them this evening. Has your rent been increased lately?
A. Well, since he died; yes sir.
Q. Since who died?
A. Mr. Gele.
Q. How much do you pay now?
A. I only paid twelve dollars before; now, I pay two dollars and a half a month.
Q. That is thirty dollars a year?
A. Yes sir.
Q. How often do you make your payments now?
A. I pay monthly or two months, or three months; it runs back sometimes. It runs back sometimes as far as three months.
Q. You pay at irregular times?
A. Yes sir.
72 Q. Did you ever make any payments to Mr. Laffererie?
A. No sir.

Q. Now, where is this house—when did you start building this house in 1896?

A. In 1896, in the Fall.

Q. How long did it take you to build it?

A. About a month, just working along at it slowly.

Q. How big is it?

A. I made an addition now,—I suppose it is about forty feet long or more.

Q. It takes up about forty feet. This house is over in the corner of the square is it not?

A. Right near Thalia Street, near the Valley road; right close to the fence.

Q. Near the corner of Thalia and Clark Streets?

A. No, sir, near the corner of Thalia street and Hagan Avenue.

Q. Suppose you take this plan that has been introduced in evidence here——

A. I can show you my place.

Q. You see square 150 which I am pointing to?

A. Yes sir.

Q. Can you indicate on it what part of that square your shack is on; take this pencil?

A. This is the Valley road right here.

Q. That green line is a fence?

A. Here is Thalia street right here.

Q. Thalia street is here (indicating).

A. Well, I am right here; right in Thalia Street, right in the corner of Thalia street, and Hagan Avenue runs along here.

Q. Hagan Avenue is here?

73 A. I am right on the corner, and Thalia Street, right in the fence, and Clark Street is behind here, along outside.

Q. Are you on the railroad side, or the other side?

A. No, sir, I am on the other side of the fence on the Gele side.

Q. How long has that fence been there between you and the railroad?

A. It was there when I went there; it is a line fence to keep stock off the track.

Q. You say that that fence has been there ever since you have been there?

A. Yes, sir.

Q. And you went there in 1896?

A. I went there in 1896 in the Fall.

Q. Is there anything else on that square besides your shack?

A. There was an old man I found there; old man Briggs; it is there yet.

Q. Is he still there?

A. No, sir; he's dead.

Q. Are there any other fences on that square?

A. Well, only part of a partition fence I put up myself.

Q. Where, on the other side of the fence from the railroad?

A. On this side; not on the inside (indicating).

Q. You are on the side towards Thalia Street

A. On Mrs. Gele's; not on the railroad side.
Q. What month in 1896 did you go there?
A. In October.
Q. Is the railroad today exactly in just the same position as it was when you moved there?
A. Yes, sir, the track is in the same position.
74 Q. The track is exactly as it was when you moved there?
A. Only the switch extends back further; they made that longer.
Q. Where is that spur track?
A. It runs down the line of Thalia Street.
Q. Is it on that square?
A. Yes, sir; they made an addition to it; I think it was last year.
Q. Are you certain that switch track is on that square?
A. Well, no, it is not, because it runs down Thalia Street, and Thalia Street runs there (indicating).
Q. It is not on this square, then?
A. No, sir, it runs down Thalia street.
Q. That railroad is just exactly as it was when you moved there in 1896?
A. Yes sir.

W. A. LAWLER, being duly sworn by the minute clerk, testified as follows:

Examination by Mr. ORY:

Q. What is your full name.
A. William A. Lawler.
Q. What is your business?
A. Broker in cotton seed products.
Q. Are you connected with the Lawler Mills back of town?
A. I used to be, but am no longer.
Q. Will you kindly look at this map and state on what square your mill was? Here is Hagan Avenue, and Thalia Street and Clark street; and here is the railroad track; here is Erato Street.
A. I cannot tell the number myself from that.
Q. Can you tell on what street your mill fronts?
75 A. The back of the mill, the rear of the mill fronted on Hagan Avenue.
Q. And what other street?
A. Erato street, I think, or Thalia Street; to tell the fact, I don't remember all the names while I have been out there, too.
Q. On what street does the back of your mill front?
A. I don't remember the name of the street at the back; I was always confused with those streets back there, the way they run.
Q. Was there a switch track at the back of the mill?
A. It fronts on the switch track—not the back of the mill, the switch track, but it used to be on the side of the warehouse.
Q. Do you know Scott Douglas?
A. Yes, sir.
Q. Do you know where he lives?

A. Yes.

Q. Can you point that out on the map? Here is Hagan Avenue, and Clark street and Melpomene street, and here is the track of the Yazoo & Mississippi Valley Railroad.

Q. Douglas is between the Mississippi Valley track and our mill switch.

Q. On which street does your mill switch front?

A. Now, I don't remember; I never did remember on which street it fronted—what street; I have always been confused about those streets; they had no signs up there, and all I know was Washington street and Hagan Avenue; the mill fronted on Hagan Avenue, if that is what you wanted to know.

Q. How long are you connected with the mill?

A. I built that mill in 1895.

76 Q. For how many years were you connected with it?

A. About eleven or twelve years—eleven years, I think.

Q. You cannot remember on what street that mill fronted?

A. I often heard the name of the street, but I don't remember; I never could locate them.

Q. Don't you know on what street Scott Douglas lives?

A. I could not say; I know where he lived, but I could not say what the name of the street was.

Q. You cannot locate it on the map or otherwise?

A. Well, if you will show me——

Q. Is there a railroad track there?

A. If you will show me the square where the mill was located, I will locate Scott Douglas' place.

Q. It is not my duty to do that. Is there a railroad track in the square in which Scott Douglas lives?

A. There is a track,—the main line of the Yazoo & Mississippi Valley Railroad, on the uptown side the Scott Douglas' place.

Q. He lives then between the track and the street?

A. He lives between the track—the Mississippi Valley main track and our switch.

Q. Is not there a street on which your switch is?

A. There is no street open, no, sir, one parallel with the switch.

Q. Try to locate it on this blue print; here is Hagan avenue and here is the track (indicating). In other words, Mr. Lawler, you don't know where you are at. You are at sea—well, you are not the first man that could not locate on maps; there are some people that way. How long have you known Scott Douglas?

77 A. Since about 1898.

Q. Since about 1898?

A. Yes sir.

Q. You have known him to be living there?

A. Yes, and maybe a year or so before that.

Q. Has he been living at the same place all this time?

A. He has been living up there all the time until I gave up the mill.

Q. When was that?

A. About three years ago—three or four years.

Q. You have known him to be living in this present location for a number of years?
A. Yes sir.
Q. You employed him?
A. Well, he may have worked at the mill, but as far as I know he was keeping an eating stand out there, working for himself.
Q. There are buildings on the square occupied by him?
A. Yes sir.
Q. Are they old or new.

By Mr. LEMANN: The same objection is urged to this testimony as heretofore made.
By the COURT: The same ruling will apply.

A. They are old shacks.

Examination by Mr. LEMANN:

Q. How long did you say you have known Scott Douglas?
A. Over eight years—since about 1897 or 1898. Ever since I built the mill.
Q. Are you certain that he has been in that location since 1898?
78 A. I am certain.
Q. You say you parted with your mill four or five years ago?
A. About four years.
Q. You don't know what the conditions have been out there since then, do you?
A. No, sir.
Q. You don't know how often you have been out there since?
A. Yes, I have been out there occasionally.
Q. Have you seen Scott Douglas out there since?
A. I never noticed him out there, no, sir.
Q. Have you ever noticed the fence between Douglas' place and the railroad, and his house and the railroad?
A. Well, I did notice they had a rail fence—two fences; put up all kinds of fences.
Q. His house is on which side of the fence?
—, ——.
Q. His house is on which side of the fence, is it towards the mill?
A. Towards the mill, yes, sir.

By Mr. LEMLE:

Q. The railroad track was there when you went out there?
A. Yes, sir, the main track was there.
Q. And it was there when you left there?
A. Yes.

By Mr. ORY:

Q. Do you know a man by the name of Briggs?
A. Yes, sir.
Q. Where does he live?

A. He lived somewhere in that neighborhood, I don't know exactly the number.

79 VAL J. FLANAGAN, being duly sworn by the Minute Clerk testified as follows:

Direct examination by Mr. ORY:

Q. What is your occupation?
A. Cotton seed oil refiner.
Q. In whose employ are you?
A. Now, in the Interstate Cotton Seed Crushers Association.
Q. Were you ever in the employ of Mr. Lawler's mill back of town?
A. Yes, thirteen years.
Q. When did you leave their employ?
A. I left their employ in 1898; somewhere in 1898—1908 rather.
Q. From 1908, back, how many years were you in their employ?
A. Until September 1895.
Q. From 1895 to 1908?
A. Yes, sir.
Q. Did you ever know a colored man by the name of Scott Douglas?
A. Well.
Q. Do you know where he lives, Mr. Flanagan?
A. Yes.
Q. Can you tell us?
A. Yes.
Q. Where does he live?
A. He lived across the track—the building that he lived in has a long front like; it has been built—ever since you may say on the Thalia street side in the triangle.
Q. Between what streets?
A. Well, the square is bounded by Hagan Avenue, Melpomene and Clark, and in the back it is known as some other street now.

80 Q. How long do you know him to be living there?
A. He has been living there since—since 1897 or 1896; it was during that time I know him; he was there in 1897, he was living there.
Q. Was the railroad track of the Yazoo & Mississippi Valley Railroad then on that square?
A. Yes, sir.
Q. Where is the building?
A. On the shorter triangle of the square; the smaller portion of the square.
Q. Between the track and Thalia street?
A. Yes, sir, between the track and Thalia street.
Q. Is he there now, do you know?
A. He was there a few months ago.

By Mr. LEMANN:

Q. What is your age?
A. Twenty-nine.
Q. How old were you when you started to work for the Lawler Company?
A. Fourteen years of age.
Q. How can you be certain that you knew this man Scott Douglas in 1897?
A. Because I employed him; I was clerk.
Q. I mean, how are you certain about the year?
A. Well, I know that he happened to be a good man, and I had him as my foreman of my seed house gang.
Q. I mean, not certain that you employed him, but certain as to the time?
A. I know about the time I am certain, as I helped him along.
Q. How do you know it was not 1899 or 1900?
A. Well, I am certain to the extent that it was before that time.

81 Q. You are certain it was before 1901?
A. Yes, dead sure it was.
Q. How can you be certain of it?
A. Mr. Lawler had a partner by the name of Chaery, and he died in the very first part of 1899, and it was before that time that I employed Douglas in the warehouse.
Q. So you are certain it was before 1899?
A. Yes.
Q. Can you be certain that it was before 1898?
A. That it was before, do you say?
Q. Yes.
A. I am certain that he was out there before 1898?
Q. That is just your general recollection?
A. Yes, sir.
Q. How can you be certain?
A. From memory.
Q. You have no way of fixing it definitely?
A. No, sir, being quite a long time between that time and now.
Q. Mr. Flanagan, Douglas built off in the corner of that square?
A. Not exactly; it is over behind this end, but in before Hagan Avenue; the railroad comes in really over behind Hagan Avenue and Thalia Street.
Q. His building is in the point of the square towards the mill and away from the railroad, is that right?
A. Yes, sir.
Q. That square, I suppose, is more or less as it naturally was, from 1895 to 1908?
A. Yes, sir.
Q. Was there any change in the general appearance of the square, buildings and enclosures, from 1895 to 1908?

82 A. Not on that particular square, no.
Q. It was the same in 1908 as it was in 1895?

A. Except that he made additions to the first little thing that he threw up.

Q. As far as the railroad was concerned, the conditions were just the same?

A. Yes, sir.

Q. You don't know when that fence was first put there between the office and Douglas?

A. No, sir.

Q. Did not the rear of the Lawler mill front on Thalia Street?

A. The outside mill.

Q. Yes.

A. Yes, sir.

Q. And the inside mill front on Thalia Street?

A. The side of the mill is on Thalia Street where the switch track runs through.

Q. There is more than one building on that square occupied, is there not?

A. Where Douglas' place was?

Q. Yes.

A. Yes, there is an old shanty there; it has been there since I went there; an old man by the name of Briggs was there when I went there to the mill.

By Mr. LEMANN:

Q. That shanty you spoke of just now, is that on the same side of the fence where Douglas' house is?

A. Yes, sir.

GASPAR PETRIE, being duly sworn by the minute clerk,
83 testified as follows:

Direct examination by Mr. ORY:

Q. Do you know Scott Douglas?

A. Yes, sir.

Q. Who did he pay rent to?

A. To me.

Q. What relation are you to J. M. Gele?

A. Son-in-law.

Q. Do you know the square bounded by Hagan Avenue, Thalia, Clark and Melpomene Street-?

A. I do.

Q. How long have you paid taxes on that property?

A. Yes, sir——

Q. I say, for how long?

A. Ever since the death of Mr. Gele.

Q. Who has been attending to the collection of rents of that property?

A. I have.

Q. From what time?

A. From his death.

Q. How long is that?

A. I think he will be dead four years this September.
Q. Do you know who collected the rents before that?
A. Himself.
Q. Are there any buildings on that square?
A. Yes, sir.
Q. How long has Scott Douglas been occupying that property, do you know?
A. Well, I cannot say exactly, but when the mill was building, I noticed the building there; now whether Scott Douglas lived in it or not, I cannot answer.
Q. Did you know a man by the name of Briggs?
84 A. I did.
Q. Was he occupying that property?
A. He occupied one of the properties.
Q. One?
A. Yes, one of the shanties.
Q. How long has he been on the property, for how many years?
A. Briggs?
Q. Yes.
A. Well, Briggs' was a low shanty, and Douglas' was a small he was there up to the time that he died.
Q. When did he die?
A. I guess Briggs is dead nine years—eight or nine years.
Q. Do you know whether he ever paid rent for that property?
A. Briggs? Yes, he paid rent, because I remember Mr. Gele having a suit filed, and he was made to pay rent.
Q. That was how long before his death, do you know?
A. I think that was since about five years before his death.
Q. Well, then, there was a building occupied by Briggs, and a building occupied by Scott Douglas?
A. Yes, sir.
Q. What was the character of those buildings?
A. Well, Briggs' was a ow shanty, and Douglas' was a small shanty.
Q. Can you tell how long the railroad track has been on that square?
A. No, sir.
Q. Well, how far back do you remember it of your own personal recollection?
A. Well, I might say about the nineties; I remember it that far back.
Q. What track is along that square?
85 A. The Yazoo & Missi-sippi Valley Railroad.
Q. Who have you been acting as the agent of—for who?
A. For the widow, Gele.
Q. For anybody else in connection with the property?
A. Well, Lafferriere and Etienne Gele.
Q You collected the rents for their account?
A. Yes, sir.
Q. Since the death of Mr. Gele?
A. Yes sir.

By Mr. LEMANN:

Q. You have been collecting rents for four or five years then?
A. Yes sir.
Q. You don't know anything about what was done of your own knowledge?
A. Yes, I know that Scott Douglas paid one dollar a month.
Q. You know that of your own knowledge?
A. Yes, sir.
Q. Can you fix the date when that began?
A. No, sir, I could not fix the date.
Q. You don't know how long he was doing it?
A. I know what?
Q. I say, you cannot fix the time that it began?
A. No, sir.
Q. You are still collecting rent from Scott Douglas?
A. Yes, sir.
Q. This house which Scott Douglas occupied is not the property of the Yazoo & Mississippi Valley Railroad?
A. No, sir.
Q. In other words it is not included in the sale of the Geles and Lafferriers to the railroad company?
A. No, sir.

By Mr. LEMANN: Reserving the right to urge all objec-
86 tions to this evidence, I do not waive any rights in the matter; it appears that all of the evidence clearly points to houses which are not in this suit, and do not enter into this suit at all.

By Mr. LEMLE: As far as we are concerned, I am only concerned with the land.

Q. So, that this house of Douglas—how about the house of Briggs? Is that still the property of Gele and Laferriere?
A. It is still their property, yes, sir.
Q. All on the Thalia street side of the fence away from the railroad?
A. All on the Thalia street side away from the railroad.
Q. Now, has there been any change in the general condition of that square since you have been observing its condition?
A. Yes, sir.
Q. Everything is just as it was when you first began to take notice of it, say in 1895?
A. You may say 1894.
Q. Since 1894?
A. Except that Scott Douglas made additions, put up a little two-story place in addition.
Q. He built his house in 1896, did he not?
A. I don't know when he built it; I know the house was there before Douglas ever moved around there.
Q. It was there before he moved around there?
A. Yes, sir.
Q. Douglas says he built the house.
A. I know, but I think he is mistaken; it was there before that.

Q. He has testified that he built the house.

A. Well, he may have built it a few years previous to that.

87 Q. You say the house was there previous to that?

A. Before the mill was built.

Q. Can you say who put up the house?

A. I don't know who it was.

Q. You don't know whether Douglas put it up or not?

A. I know he put up an addition to it.

Q. You don't know whether he put up the additional house?

A. No, sir.

Q. As far as the railroad is concerned, conditions are just the same as they were in 1894 and 1895?

A. Yes, as far as I know.

Q. Do you know how long that fence has been there between Douglas' house and the railroad track?

A. No, sir.

Q. It has always geen there as far as you know?

A. As far as I remember, it was there; a barb wire fence.

By Mr. ORY:

Q. I understand you to say that it was built on that property—that there was built on that property a building occupied by Briggs, who made an addition to that; is that correct?

A. The building occupied by Scott Douglas, he made an addition.

Q. I meant Scott Douglas; that was not the building occupied by Briggs—the one occupied by Scott Douglas?

A. No, sir.

Q. And those buildings are between the wire fence and Thalia street?

A. Between the wire fence and Thalia street.

Q. And they are on that square bounded by what streets?

A. Bounded by Thalia street, Melpomene street, Hagan

88 Avenue, and Clark street.

Q. Can you state from an inspection of this survey or map, where is located square No. 150?

A. It is bounded by Hagan Avenue, Thalia street, Melpomene and Clark streets.

Q. Is that the square on which the Yazoo & Mississippi Valley Railroad tracks are?

A. Yes.

Q. Now, inspecting that map, can you tell on what part of the square the buildings of Briggs and Scott Douglas were?

A. Scott Douglas' is about here (indicating).

Q. Between the line of what?

A. On Thalia street between Hagan Avenue and Clark; right about here.

Q. Where were the buildings occupied by Briggs?

A. Right about here.

Q. Nearer to Clark street?

A. Yes, nearer to Clark street.

By Mr. LEMANN: I think you have got the wrong side.

A No, sir, I am correct; it is here.

By Mr. ORY:

Q. The buildings are between the railroad track and Thalia street?

A. The buildings are between the railroad track and Thalia street.

Q. And bounding Hagan Avenue and Clark street?

A. Yes, sir.

By Mr. LEMANN:

Q. And the buildings are over towards the corner of the square?

A. Well, they are about midway in the square, if anything; most of the buildings are towards the Clark street end of the
89 square.

Q. But they are on the side of the track towards Thalia street are they not?

A. Towards Thalia street, yes, sir.

Q. And all on the other side of the fence?

A. They are all on this side of the fence.

Q. On the Thalia street side of the fence?

A. Yes, sir, on the Thalia side of the fence.

Q. They have always been on the Thalia street side?

A. They have always been on the Thalia Street side.

Q. That fence has been there ever since you know?

A. Since I began, I remember there has been a fence there, yes.

By Mr. ORY: Counsel for warrantors Etienne Gele, William Laferriere, and the heirs of J. M. Gele, offers, produces and files in evidence:

1st. A certified copy of the act of sale by Bernard Recourt to William Laferriere, Etienne Gele and J. M. Gele, dated March 31, 1897, together with the certificate of registry endorsed thereon, showing registration of said act in C. O. B. 163, fo. 147 April 7th, 1897, marked "Exhibit 1."

2nd. A certified copy of act of sale by the widow and heirs of George W. Babcock, to Benjamin Recourt executed before F. J. Aleix, Notary Public, September 8th, 1896, with the endorsement thereon, showing the registry in the Conveyance Office of said Act in Book 166, Folio 15, and marked "Exhibit 2."

3rd. A certified copy of act of sale by Henry C. Boucher to George W. Babcock, passed before Theo. Guyol, notary public, dated January 15, 1872, with the certificate of registry endorsed thereon, showing the registry of said act in C. O. B. 132, Folio 168, dated January 16, 1872, marked "Exhibit 3."

90 And as part and parcel of exhibit No. 2, I offer the original plan and certificate of survey mentioned in said act of September 8, 1896, being a certificate of survey made by W. H. Reynolds, Civil Engineer, dated October 12, 1895.

In connection with the offer, counsel for warrantors, offers to prove the signature of William H. Reynolds to the certificate.

By Mr. LEMANN: Counsel for plaintiff objects to the offer of

Certificate of Reynolds, on the ground that it is not properly authenticated, in the sense that Mr. Reynolds has not testified that it is a correct survey, and there is no evidence at all to its correctness.

By Mr. ORY: I am simply offering it to show that is simply a copy and part and parcel of the act which I have offered here as exhibit No. 2.

By Mr. LEMANN: If you are offering it simply as rem ipsam I will reserve my right to object to the correctness of the survey.

By the COURT: You are offering it as part of the act, Mr. Ory?

By Mr. ORY: As annexed to the act.

By Mr. LEMANN: I simply want to restrict the offer.

BENJAMIN ORY, being sworn by the Court, testified as follows:

By Mr. CAGE:

Q. Mr. Ory, at the time that J. M. Gele and others purchased the property, were you the attorney of the purchasers?

A. I was, and I examined the title for them.

Q. Have you been their attorney since?

A. I have been attorney for Mr. Gele the past thirty years.

Q. Did you at any time in your professional capacity have a case, and know a certain tenant of the Geles, named Briggs?

91 A. I did.

Q. Where was Briggs living—on the Gele property?

A. He was, and I brought suit for ejectment.

By Mr. LEMANN: I object to any testimony as to that suit, on the ground that the record is the best evidence.

By Mr. CAGE:

Q. In what court did you bring suit to eject him?

A. The court then was at the corner of Lafayette & Camp street; I don't recollect whether it was the Fourth City Court, or the number of the court, but I remember the suit.

By Mr. CAGE: I offer in evidence the record to be produced.

By Mr. LEMANN: I make the further objection, that it is res inter alios acta.

By Mr. ORY: I want to state positively that Briggs took the stand and said——

By Mr. LEMANN: I object to statements of Briggs, on the ground that it is hearsay.

By Mr. CAGE:

Q. Is Briggs living?

A. No, sir, he is dead.

—. ——.

A. I said it was a suit for ejectment: I brought the suit——

By Mr. LEMANN: Hold on a minute.

By Mr. CAGE: We are not trying to bind him by any judgment against Briggs; we only want to show that the man was a tenant and was ejected.

By the COURT: You will produce the record, Mr. Cage?

By Mr. CAGE: Yes, sir, I will.

By Mr. LEMANN: Does your Honor overrule the objection of res inter alios acta?

By the COURT: I will send it to the merits.

A. In that proceeding I went out there and spoke to Mr.
92 Briggs——

By Mr. LEMANN: It seems to to me that any statement of what Mr. Briggs told him, is hearsay.

By Mr. ORY: I am stating what I know of my own personal knowledge.

By Mr. LEMANN: Let us ask the questions; you are the witness.

Q. You did go out on the land?

A. Yes sir.

Q. What did you find there?

A. I went there with Mr. Gele, and found Briggs occupying one building.

Q. What year was that?

A. In 1897; I know that positively, because——

Q. How do you fix the year 1897?

A. Well, I found among my records the evidence and notice of ejectment.

Q. You went out on this square No. 150, and you found houses on the premises occupied by Mr. Briggs?

A. Yes, sir.

Q. And you subsequently——

A. Yes, and found him there refusing to move out after he had been notified.

Q. And you brought suit to eject him, and did subsequently eject him?

A. I did eject him.

Cross-examination by Mr. LEMANN:

Q. You examined this title for Mr. Gele?

A. I did.

Q. Did you observe that the title originated by a proceeding of an executor to sell property wherein the executor alleged that there were no debts due?

93 A. Mr. Lemann, I will answer all that you ask; that I examined the title and approved it; I considered it good and still do.

Q. I know you still do; I just wanted to observe that particular point; that will stand as an answer: that is perfectly satisfactory

By Mr. CAGE: I offer specifically a certified copy of act of sale from the Babcocks to Recourt, fully described in the offer of Mr. Ory.

By Mr. WRIGHT: Counsel for the Babcocks adopts as his own, the testimony and evidence introduced by the various warrantors.

By Mr. LEMLE: The Yazoo & Mississippi Valley Railroad adopts

and makes its own, the evidence introduced by all of the warrantors herein.

Endorsed on Back: No. 87850. Civil District Court, Division "A." Mrs. Widow M. Brewer vs. Yazoo & Mississippi Valley Railroad Co., Testimony on behalf of Etienne Gele & William Laferriere. Filed May 26/10. (Signed) John Sbisa, D'y C'k.

Act of Sale by Bernard Recurt to Wm. Laferriere, Etienne Gele and Jean Marie Gele, Dated March 31st, 1897, Together with the Certificate of Registry Endorsed Thereon Showing Registration of Said Act in C. O. B. 163, Fo. 147, April 7th, 1897, Marked "Exhibit 1," Offered in Evidence by Counsel for Geles et als.

Filed May 26th, 1910.

94 STATE OF LOUISIANA,

Parish of Orleans, City of New Orleans:

Be it known That on this Thirty first day of March, Eighteen Hundred and Ninety Seven. Before me Benjamin Ory, a Notary Public in and for the Parish of Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared: Bernard Recurt, Esq., of this City of New Orleans, alias Benjamin Recurt, of the full age of majority, and a resident of this City. Who declared that for and in consideration of the price and sum of Twenty five hundred ($2,500.00/100) Dollars, in lawful current money of the United States, unto him this day cash in hand paid, by the purchaser hereinafter named and undersigned, the receipt whereof he hereby acknowledges and grants full and entire acquittance and discharge therefor; he does by these presents grant, bargain, sell, convey, transfer, assign and set over, with all the legal warranties and with substitution and subrogation to all his rights and action in warranty against all former owners or vendors, unto William Leferriere; Etienne Gele; and Jean Marie Gele; all of the full age of majority and all residents of this City; purchasing in equal proportions, here present, accepting and purchasing for themselves, their heirs, and assigns, and acknowledging delivery and possession of.

1st. A certain square of ground situated in the Sixth District of this City, designated as square No. 172 bounded by Hagan Ave. Rendon, Polymnia and Euterpe Streets.

95 2nd. A certain square of ground, situated in the Sixth District of this City, designated as square No. 171, bounded by Rendon, Lopey, Polymnia and Euterpe Streets.

3rd. A certain square of ground, situated in the Sixth District of this City, designated as square No. 164, bounded by Rendon, Lopez, Euterpe and Terpsichore Streets.

4th. A certain square of ground, situated in the Sixth District of this City, designated as square No. 149, bounded by Hagan Ave., Rendon, Melpomene and Thalia Streets.

5th. A certain square of ground, situated in the Sixth District of

this City, designated as square No. 150, bounded by Clark, Thalia and Melpomene, and Hagan Ave.

6th. A certain square triangle of ground, situated in the Sixth District of this City, designated by the No. 151 and measures sixty four feet eleven inches front on Thalia Street; one hundred and forty three feet, two inches and five lines front on Clark St., and one hundred and fifty five feet, five inches and five lines on the hypothenuse of said triangle.

7th. A certain triangle or square of ground situated in the Sixth District of this City, designated by the No. 166 and measures two hundred and thirty feet, ten inches and seven lines front on Hagan Avenue and two hundred and fifty three feet, six inches and five lines on the hypothenuse of said triangle, said triangle forming the corner of Hagan Avenue and Terpsichore Street.

8th. A certain triangle of ground, situated in the Sixth District of this City, designated by the No. 147A, lying between Lopez, Melpomene Streets, and Upperline Avenue (continuation of Washington Street) and measures one hundred and seventy two feet, ten inches and three lines front on Melpomene Street; One hundred and seventeen feet and four lines front on Lopez Street, and two hundred and nine feet eight inches and one line on the
96 hypothenuse of said Triangle fronting on Upperline Avenue (continuation of Washington Street) and

9th. A certain Triangle of ground, situated in the Fourth District (now assessed in the First District of this City) designated by the No. 147B, lying between Upperline Ave., or Washington Street, Thalia and Solcedo Street, measuring one hundred and twenty one feet one inch and two lines front on Upperline Ave., being the hypothenuse of said triangle, sixty eight feet, two inches and two lines front on Solcedo Street and one hundred feet front on Thalia Street, Acquired by purchase from Wid. & Heirs of Geo. W. Babcock, by act passed before F. J. Aleix, Notary, dated September 8th, 1896 (C. O. Book 166 folio 15).

The said vendor also hereby sell, transfer, and subrogate the said purchaser to all the rights, claims, and demand which he has or may have against the Mississippi Valley Railroad Company, or its assigns, on account of growing out of the fact that the said Railroad has run its tracks through a portion of said property.

To have and to hold the said hereinbefore described property with all the appurtenances thereof, unto the said present purchaser, their heirs and assigns forever.

By reference to the certificate of the Register of Conveyances for this Parish, hereunto annexed, it will appear that the said hereinbefore described property has not heretofore been alienated by the said present vendor.

The mortgage certificate otherwise required by the law is hereby dispensed with by the parties hereto and me Notary relieved of all responsibility in the premises, as is also the tax receipts.

And here the said vendor declared that he has been married but once and that his wife is still living with him in this City.

97 Thus done and passed, in New Orleans, La., on the day and date first before written in the presence of Messrs. Joseph

Lautenschlaeger and Edward Y. Ames, both competent witnesses of lawful age, who have hereunto sign their names with said appearers and me Notary.

Original Signed.

BERNARD RECURT,
Alias BEN RECURT.
J. M. GELE.
E. GELE.
WILLIAM LAFERRIERE.
BENJAMIN ORY, *Not. Pub.*

EDWARD Y. AMES.
JOS. LAUTENSCHLAEGER.

Registered in Conveyance Office Book 163, folio 447.
New Orleans, Apr. 7/97.

JOHN E. STANLEY, *Register.*

A true Copy.
New Orleans, July 9th, 1900.
(Signed)

BENJAMIN ORY,
Not. Pub. in N. O., La.

Act of Sale by the Widow and Heirs of George Babcock to Benjamin Recurt, Executed Before F. J. Aleix, Notary, September 8th, 1896, with Endorsement Thereon, Showing the Registry in the Conveyance Office of said Act is Book 166, *Folio* 15, *and Marked "Exhibit 2," Offered in Evidence by Counsel for Geles et als.*

Filed May 26th, 1910.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
Parish of Orleans,
City of New Orleans:

No. —.

SEPTEMBER 8TH, 1896.

98 *Sale of Property by Widow & Heirs of George W. Babcock to Benjamin Recurt.*

Reg. C. O. B. 166, Fo. 15.

Be it known, That on this Eighth day of the month of September in the year of our Lord One thousand eight hundred and ninety six and of the Independence of the United States of America, the one hundred and —. Before me, Ferdnand J. Aleix, a Notary Public duly commissioned and qualified, in and for this City and the Parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared,

1st. Henry C. Boucher, of this City, herein acting as the duly authorized agent & Attorney in fact of George C. Babcock under and by virtue of an act of procuration executed by said George C. Babcock per act passed before Andrew Hero, Jr., a Notary Public in this City on the 25th, April 1881, which procuration said Henry C. Boucher, declares under oath has never been revoked and is still in force & effect.

2nd. Miss Louise Boucher Babcock, unmarried.

3rd. Miss Cora Leocadie B. Babcock, unmarried.

4th. Mrs. Mary A. Babcock, widow of Charles E. Leverich.

5th. Mrs. Maria L. Shute, widow of George W. Babcock, all of lawful age and residents of this City. Who declared that they do by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which they have or may have against all preceding owners and vendors unto Benjamin Recurt of lawful age, also a resident of this City, here present, accepting and purchasing for himself, heirs and assigns, and acknowledging due delivery and possession
99 thereof, all and singular the following described property, to-wit:

1st. A certain square of ground situated in the Sixth District of this City, designated as square No. One Hundred and Seventy two, bounded by Hagan Avenue, Rendon, Polymnia and Euterpe Streets.

2nd. A certain square of ground situated in the Sixth District of this City, designated as square No. One Hundred and Seventy one, bounded by Rendon, Lopez, Polymnia and Euterpe Streets.

3rd. A certain square of ground situated in the Sixth District of this City, designated as square No. One Hundred and sixty four bounded by Rendon, Lopez, Euterpe and Terpsichore Streets.

4th. A certain square of ground situated in the Sixth District of this City, designated as square No. One Hundred and forty nine bounded by Hagan Avenue, Rendon, Melpomene and Thalia Streets.

5th. A certain square of ground situated in the Sixth District of this City, designated as square No. One Hundred and Fifty bounded by Clark Street, Hagan Avenue, Thalia and Melpomene Streets.

6th. A certain triangle of ground situated in the Sixth District of this City, designated by the No. Fifty one and measuring Sixty four feet and eleven inches front on Thalia Street one hundred and forty three feet two inches and five lines front on Clark Street and one hundred and fifty five feet five inches and five lines on the hypothemuse of said triangle.

7th. A certain triangle or square of ground situated in the Sixth District of this City, designated by the No. One Hundred and Sixty six and measures two hundred and thirty feet ten inches and seven lines front of Hagan Avenue and two hundred and
100 fifty three, six inches and five lines on the hypothemuse of said Triangle forming the corner of Hagan Avenue and Terpsichore Street.

8th. A certain triangle of ground situated in the Sixth District of this City, designated by the No. One Hundred and forty seven A,

lying between Lopez, Melpomene Streets, Upperline Avenue, continuation of Washington Avenue, and measuring One Hundred and seventy two feet, ten inches and three lines front on Melpomene Street, One hundred and seventeen feet and four lines front on Lopez Street, and two hundred and nine feet, eight inches and one line on the hypothe*n*use of said Triangle fronting on Upperline Avenue (continuation of Washington Avenue).

9th. A certain triangle of ground situated in the Fourth District (now assessed in the First District) of this City, designated by the No. One Hundred and forty seven B, lying between Upperline Avenue (or Washington Street) Thalia and Soledo Street measuring One hundred and twenty one feet, one inch and two lines front on Upperline Avenue, being the hypothe*n*use of said Triangle sixty eight feet, two inches and two lines front on Soledo Street, and One Hundred feet front on Thalia Street.

All of the said nine above described properties are shown on a certificate of Survey drawn by H. W. Reynolds, Civil Engineer, under date October 12th, 1895, a blue copy whereof is hereto annexed for reference.

The said nine pieces of property were originally acquired by George W. Babcock by purchase from Henry C. Boucher, per act passed before Theodore Guyol, late Notary in this City, on the 17th, January, 1872, registered in the Conveyance Office of this City in Book 102, folio 68.

The said George W. Babcock died on the 11th day of Feb.
101 1874, leaving said appearer, Mrs. Marie Shute Babcock as his widow in community and the following children by other anterior marriages as his sole and only heirs at law, herein also appearing, to-wit: Mrs. Louise Boucher Babcock, Miss Cora Leocadie Babcock, George C. Babcock and Mrs. Mary A. Babcock, widow of Charles E. Leverich.

The said properties herein conveyed are the same properties which the said vendors, with the exception of Mrs. Maria Shute, widow of George W. Babcock, erroneously attempted to partition between themselves by an act passed before Theodore Guyol, late Notary in this City, on the 9th day of May 1874, registered in the Conveyance office of this City in Book 148, Fo. 325.

The said vendors herein do also hereby sell, transfer, and subrogate the said purchaser herein to all the rights, claim, and demand which they have or may have against the Mississippi Valley Railroad or its assigns on account of, or growing out of the fact that the said Railroad has run its track through a portion of said property to-wit:—square No. 150, for the expropriation of which land, said appearers did declare that they have received no compensation from said Railroad, or any other source, and have not bargained away, nor in any manner released said Railroad from said claim.

By reference to the hereto announced certificate of the Recorder of Mortgages for the City and Parish dated this day, it will appear that said properties are free from encumbrances in the name of said vendors except.

1st. The Drainage privilege, on said nine properties, which said vendors declare has been paid.

2nd. The General Mortgage against George W. Babcock resulting from his confirmation as Tutor of the minors, Mary, Amelia, Louise, Leocadie Boucher Babcock as per certificate before A. J. Villere, D. Clerk, 2 Dist. Court and thereupon said Misses Louise Boucher Babcock, Cora Leocadie Babcock and Mrs. Mary A.
102 Babcock, widow of Charles E. Leverich, declare that they are the persons in whose favor said minors' mortgage is recorded, that they consent *to* said minors' mortgage be cancelled & authorize and require the undersigned Notary to cause the Recorder of Mortgages for the Parish to cancel and erase the same from the Books of his office.

All the City and State Taxes up to and including the year 1895 are paid as per certificate of the City Comptroller and State Tax Collector hereto annexed, except however, the Taxes for the current year 1896, which the purchaser hereby assumes and binds himself to pay and the City Tax for the year 1871, on square 147 A in the name of Daniel Parish, which tax the vendors bind themselves to cause to be cancelled in the shortest possible delay.

To have and to hold the above described property unto the said purchaser his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of Twenty One Hundred Dollars, Cash, which the said purchaser has well and truly paid, in ready and current money, to the said vendors who hereby acknowledge the receipt therefor and grant full acquittance and discharge therefor.

All State and City taxes up — and including the taxes due and exigible in — are paid as per —.

By reference to the certificate of the Register of Conveyance *and* in and for the Parish of Orleans annexed hereto it does not appear that said property has been heretofore alienated by the vendors.

Thus done and passed, in my office, at the City of New Orleans, on the day, month and year herein first above written in
103 the presence of Andrew H. Wilson and James B. Guthrie, competent witnesses, who hereunto sign their names with the said appearers, and me, Notary, after reading of the whole.

(Original Signed)

MARY A. LEVERICH.
CORA L. BABCOCK.
GEO. C. BABCOCK.
P. P. H. C. BOUCHER.
ANDREW H. WILSON.
LOUISE B. BABCOCK.
MARIA L. BABCOCK.
BEN. RECURT.
JAMES B. GUTHRIE.
F. J. ALEIX, *Not. Pub.*

A True Copy.
[SEAL.] (Signed) F. J. ALEIX, *Not. Pub.*

Plan and Certificate of Survey (Annexed to Exhibit 2) Made by W. H. Reynolds, Civil Engineer, Dated October 12th, 1895.

Filed May 26th, 1910.

(Here follows map marked p. 103.)

104 *Act of Sale by Henry C. Boucher to George W. Babcock, Passed Before Theo. Guyol, Notary Public, Dated January 15th, 1872, With the Certificate of Registry Endorsed Thereon, Showing the Registry of said Act in C. O. B. 132, Folio 168, Dated January 16th, 1872, Marked "Exhibit 3," Offered in Evidence by Counsel for Geles et als.*

Filed May 26th, 1910.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA,
City of New Orleans:

Be it known, That on this Fifteenth day of the month of January in the year of our Lord one thousand eight hundred and seventy two, before me Theodore Guyol, a Notary Public, duly commissioned and sworn in and for this City and the Parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Henry Charles Boucher, residing in this City, who declared that he does by these presents, grant, bargain, sell, assign, convey, transfer and deliver unto George W. Babcock, also of this City, present, purchasing and acknowledging due delivery and possession thereof.

First, Five several squares or parcels of ground designated by the Nos. One Hundred and Fifty one, One Hundred and Sixty four, One Hundred and sixty six, One Hundred and Seventy One and One Hundred and Seventy two, on a plan drawn by Arthur de Armas, on the 25th day of March 1871, and deposited as plan G, in this office for reference: Square No. One Hundred and Fifty One is bounded by Clark or Violet and Thalia Street- and a line dividing it from other property and is of a triangular form; Square
105 No. One Hundred and Sixty four is bounded by Third or Lopez, Second or Rendon, Euterpe and Terpsichore Streets, Square No. Hundred and Sixty sixth is bounded by Hagan or St. John Avenue, Terpsichore Street and Line dividing it from other property, and is of a triangular form: Square No. One Hundred and Seventy One is bounded by Third or Lopez, Second or Rendon, Polymnia & Euterpe Streets, and Square No. One hundred and Seventy two is bounded by Second or Rendon, Polymnia and Euterpe Streets and Hagan Ave. or St. John Avenue, the whole in conformity with the said plan.

Which squares and parcels of ground were purchased by the said

MAPS

TOO

LARGE

FOR

FILMING

vendor, from Daniel Parish, by an Act passed in this office on the Twenty fifth day of April eighteen hundred and seventy one.

Second. And four other squares and portions of square of ground designated by the No. One Hundred and Forty seven A, One Hundred and forty seven B, One Hundred and forty Nine and One Hundred and Fifty on the plan above referred to; the portion of ground No. One Hundred and Forty seven A, is of a triangular form and is bounded by Third or Lopez, Van Buren or Solcedo and Upperline Streets; The portion of ground No. One Hundred and forty seven B, also of a triangular form *and* is bounded by Solcedo or Van Buren, Thalia and Upperline Streets; Square No. One Hundred and Forty nine is bounded by Hagan or St. John Avenue and Second or Rendon, Thalia and Melpomene Streets, and Square No. One Hundred and Fifty is bounded by Hagan or St. John Avenue and Violet or Clark, Thalia and Melpomene Street- the whole in conformity with the said plan.

Which said squares and portions of square were purchased by the said Vendor from the Estate of Henry Parish, by an Act passed before the undersigned Notary, on the Twenty fifth day of April aforesaid 1871.

106 To have and to hold the said property unto the said purchaser his heirs and assigns forever. And the said vendor does hereby cède and transfer unto the said purchaser, all the rights and actions of warranty, to which he is or may be entitled against all the former owners and proprietors of the said property, subrogating the said purchaser to all the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of Six Hundred Dollars, which the said vendor hereby acknowledg*ing* to have received in ready money from the said purchaser and for which he grants acquittance.

United States Internal Revenue Stamps of the value of One Dollar, are hereto affixed duly cancelled.

All taxes due on the said property have been paid as appears from the proper receipts exhibited to me Notary, and as regards to those for the last year, they shall be paid by the said purchaser when due and demandable.

According to the annexed certificates of the Register of Conveyance and Recorder of Mortgages, for this Parish, the said property has not been alienated by the said vendor and it is free from encumbrances in his name.

Done and passed in my office, at the City of New Orleans, on the day month and year first before written, in the presence of Armand Guyol and John Stiriner, competent witnesses who have signed these presents with the said parties, and me Notary, after reading the whole.

(Signed) H. C. BOUCHER.
GEO. W. BABCOCK.
ARMAND GUYOL.
JOHN STRINER.
[SEAL.] THEO. GUYOL, *Not Pub.*

A True copy, of the original duly stamped.
(Signed) THEO. GUYOL, *Not Pub.*

Registered in Conveyance Book No. 102, Fol. 68.
New Orleans, 17th January, 1872.
(Signed) C. B. FISH, *D. R.*

107 STATE OF LOUISIANA:

Civil District Court, Division "A."

No. 87850.

Mrs. WIDOW M. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY et al.

Testimony and Notes of Evidence Taken in Open Court Before the Hon. T. C. W. Ellis, Judge Presiding, on the 7th Day of April, A. D. 1910, on Behalf of Yazoo & Mississippi Valley Railroad Company.

Appearances:

For the Plaintiff: J. M. Lapeyre, Esq., and Messrs. Hall, Monroe & Lemann.
For the Yazoo & Mississippi Valley Railroad Co.: Messrs. Gus Lemle and A. A. Coreno.
For Etienne Gele et al. and William Laferriere: Benjamin Ory, Esq.
For George Babcock et al.: Messrs. W. W. Wright and G. T. Beauregard.
For Bernard Recourt: Hugh C. Cage, Esq.

Index.

F. G. Davis ..... page 1.
O. M. Dunn ..... page 7.

Reported by
ALLAN R. BEARY, *Stenographer.*

108 F. G. DAVIS, being duly sworn by the minute clerk, John Sbisa, testified as follows:

Direct examination by Mr. LEMLE:

Q. Mr. Davis, what is your occupation?
A. Civil Engineer.
Q. In whose employ are you?
A. The Illinois Central and Yazoo & Mississippi Valley Railroads.

Q. I hand you a blue print, and ask you to state to the Court what it represents.

A. It respresents the location of the Illinois Central and Yazoo & Mississippi Valley tracks in the vicinity of Hagan Avenue, between what we call Poydras Junction and Hagan Avenue.

Q. On the map I notice, a square marked 120, with the railroad track through it; is that correct, the location of the track on that square?

A. You mean square 150 do you not?

Q. Square 150, yes.

A. Yes, sir.

Q. How long do you know that that track has been there?

A. Of my own personal knowledge I can only go back about three years.

Q. Well, now, what track is that, a spur track or the main track of the railroad?

A. It is the main track.

Q. You found the track there when you came there?

A. Yes, sir.

Q. It has not been moved since?

A. No sir.

By Mr. LEMLE: I offer the blue print in evidence in connection with the testimony of the witness, marked "D-1."

109 By Mr. LEMANN:

Q. Did you make that blue print?

A. Yes sir.

Q. You know it is correct?

A. Yes sir.

By Mr. LEMLE:

Q. What is the width of the right-of-way?

A. Approximately 100 feet; fifty feet on each side of the centre of the track.

Q. Explain to the court what you mean by the right-of-way? It is the track, and then on the outside of the track is what?

A. The property taken up by necessary embankments, and ditches for drainage.

Q. And the ditches are there?

A. Yes, sir.

Q. And the embankment is there?

A. Yes, sir.

Q. And the embankment and ditches are 100 feet wide?

A. They take in approximately 100 feet, yes, sir.

Q. That is, fifty feet on each side of the line?

A. Yes, sir.

By Mr. ORY:

Q. Are the railroad tracks—I mean the rails, are they there?

A. Yes, sir.

Q. They are entirely visible to the naked eye, to any man who walks about there?

By Mr. LEMANN: I object. Ask the question, but do not state the answer.

By Mr. ORY: I am on cross-examination.

By the COURT: Re-frame the question, Mr. Ory.

110 By Mr. ORY:

Q. Can or cannot the tracks be seen by merely walking in that neighborhood?

A. They can be seen.

Q. Readily?

A. Yes, sir.

Q. The roadbed is the usual railroad track bed?

A. Yes, sir.

Q. With ditches on both sides?

A. Yes, sir.

Q. How long have you been in the employ of the railroad company?

A. About eight years.

Q. This track has been there all this time, do you know?

A. I have not been located here all that time.

Q. Have you seen the buildings on that property?

A. Yes, sir.

Q. Are they old or new?

A. Old.

Q. Can you tell from their general appearance how old they are?

By Mr. LEMANN: I will object to any further questions of that kind, as calling for the witness' opinion.

By the COURT: I believe he can describe the buildings and say whether they look old or new. You may answer and describe the buildings, how they look.

A. There are several old shacks, and it would be impossible to tell from the appearance how long they have been there.

By Mr. ORY:

Q. Well, now, what do you mean by that; that they look so new or so old that you cannot tell?

A. They look so old.

111 Q. Do you think they have been there five years from theis appearance?

By Mr. LEMANN: I make the same objection to this line of questions.

By the COURT: I make the same ruling.

By Mr. LEMANN: I reserve a bill.

By Mr. ORY: Can you tell pretty accurately from their appearance and the character of the buildings how long they have been there?

A. No, sir, I cannot tell; they have been there for a number of years.

Q. Can you tell what square they are on?
A. Square No. 150.
Q. What are the streets bounding square No. 150?
A. Thalia, Melpomene, Hagan Avenue & Clark Streets.
Q. You have no knowledge of the value of that property?
A. No, sir.

Cross-examination by Mr. LEMANN:

Q. Mr. Davis, how much space do those railroad tracks actually take up—the tracks themselves?
A. You mean the rails?
Q. Yes.
A. Four feet, eight and one-half inches, inside measurement between the rails.
Q. There are two rails are there not?
A. Yes, sir.
Q. How wide is that embankment at the top?
A. Approximately twenty feet.
Q. And how wide at the bottom?
A. Possibly 50 feet.
112 Q. Is the embankment that wide at the bottom?
A. Yes, sir.
Q. Where are the ditches?
A. At the foot of the embankment.
Q. Are the ditches on the other side of the fifty feet then?
A. On either side of the embankment.
Q. Then, if the ditches are on either side of the embankment, it is more than fifty feet from the outside of one ditch on one side, to the outside of the ditch on the other side; is that right?
A. The outside edge of each?
Q. From the outside edge of the ditch on the left-hand side, to the outside edge of the ditch on the right-hand side, is how far?
A. I could not say how far it is, I have not measured it exactly.
Q. You do not know?
A. I say the embankment is approximately fifty feet wide at the base.
Q. Have you observed those ditches lately?
A. Not specially.
Q. They are not used by the railroad for any special purpose?
A. Used for draining the property.
Q. Just put there generally for draining the property?
A. Yes, sir.
Q. Do you know if they are opened or filled?
A. I think they are open.
Q. You don't know that do you?
A. Not positively.
Q. Now, I see a red line on square No. 150; that is the line that you have identified as the line of the railroad?
A. Yes, sir.
Q. What is this green dotted line on square No. 150?
113 A. It is a line of fence.

Q. Fence? What fence?
A. The right-of-way fence.
Q. Do you know how that line was located?
A. By measurement from the railroad.
Q. How did they get those measurements?
A. With a tape line.
Q. They are measurements, in other words, based upon what the railroad believes to be the line of its title?
A. I presume so; they were located before I came here.
Q. They were located before you came here?
A. Yes, sir.
Q. Well, now, where are those old shacks of which you have spoken with reference to this green dotted line?
A. Over near the Thalia street side of the property.
Q. Over this way? On this side of the tracks?
A. Yes, sir.
Q. They are not on the railroad side of the fence at all?
A. No, sir.
Q. Do those shacks belong to the railroad?
A. I could not say.
Q. Are there any other fences that you know of on that property?
A. No, sir.
Q. Where did you get the data to make this survey from?
A. From maps furnished from the Chief Engineer's office in Chicago.
Q. They were furnished from the Chief Engineer's office?
A. Yes, sir, compiled from the data secured from the City Engineer's office here.
Q. You have no first hand knowledge of the correctness of this map?
A. I made the survey.
114 Q. All you know is, that this line is correctly shown with regard to the corners of the square?
A. Yes, we ran to the adjoining property.
Q. You got your data as to the adjoining property from these other maps?
A. Yes, sir; and fortified it by an actual survey of the property.

By Mr. CAGE:

Q. Trains run over those tracks daily?
A. Yes, sir.
Q. How long to your knowledge, has that been going on?
A. Ever since I have been there—about three years.

By Mr. ORY:

Q. You located the corners of this square in your survey, sir?
A. Yes.
Q. I mean both corners of Hagan Avenue and Thalia streets right here, (indicating).
A. Yes sir.

Q. You located the corner of Clark & Thalia streets, and the Corner of Mepomene and Hagan Avenue?
A. Yes sir.

By Mr. LEMLE: Counsel for defendants produces, offers, and files in evidence, a certified extract from the recordation of act of sale from Jean Marie Gele, and Etienne Gele, to the Yazoo & Mississippi Valley Railroad Company, recorded in Conveyance Office Book 174, folio 59, of the Conveyance office of the Parish of Orleans marked "D-2."

O. M. DUNN, being duly sworn by the minute clerk, John Sbisa, testified as follows:

Direct examination by Mr. LEMLE:

Q. What is your position?
115 A. Superintendent of the Illinois Central and Yazoo & Mississippi Valley Railroads.
Q. How long have you been employed by the respective railroad companies you refer to?
A. About eighteen years.
Q. Do you know whether the main lines of the Yazoo & Mississippi Valley and Illinois Central Railrods are located at present, leaving New Orleans?
A. Yes, sir.
Q. How long have they been located where they are, that you know of?
A. Well, of my personal knowledge, since 1884; of course the Illinois Central Railroad has been located according to the records in its present location, since it was built, about 1856, I think it was.
Q. Now, specially referring to the track of the Yazoo & Mississippi Valley Railroad, which crosses square 150 along its main line, how long has it been there?
A. Well, to my knowledge since 1884; to my personal knowledge.
Q. There has been no change in the location has there?
A. No, sir.
Q. The main line—that is part of the main line is it not?
A. Yes, sir, that is the main line of the Yazoo & Mississippi Valley Railroad.
Q. Do trains pass over that track daily?
A. Yes, sir.
Q. About how many?
A. Oh, about an average of twenty-five or thirty.
Q. And at all hours of the day and night?
A. Yes, sir.
Q. The track and the roadbed and the ditches etc., are patent to any one who goes into that vicinity are they not?
A. Yes sir.
116 By Mr. CAGE: According to the records of that road, when was that track laid and built?

A. Well, I am not familiar with the records, but to the best of my knowledge the track was laid about 1882.

By Mr. ORY:

Q. Mr. Dunn, you are familiar with the property involved in this suit, known as square 150 on that map?

A. Well, I know the location of it, but I do not know the details of all the improvements on it.

Q. Do you know whether there are any buildings on this property?

A. I could not tell you; I do not pay any attention to anything outside of the company's right-of-way.

By Mr. LEMANN:

Q. Do you know if there is anything at all on that square No. 150 except the railroad track of the Yazoo & Mississippi Valley Railroad?

A. I could not say; I do not pay any attention to buildings outside of the right-of-way in that section especially.

Q. Has the railroad company, got anything on that square except the rails?

A. The embankment, it has been fenced in—the right-of-way; what we assumed was ours and fenced in.

Q. You say there is a fence put there by the railroad?

A. There has been, but I don't know how complete it is now; we have undertaken to maintain the fences.

Q. You know you gave orders to put a fence there?

A. Well, I will say the general policy of the company is to keep the lines fenced.

117 Q. Do you know of your own knowledge that there is a fence there?

A. I could not say that there is.

Q. Mr. Dunn, how much space do your tracks take up on this square?

A. You mean the tracks?

Q. Yes; how many tracks are there on the square?

A. One.

Q. How much space does this track occupy?

A. The track itself, including the cross-ties, about nine feet.

Q. About nine feet?

A. Yes, sir, and then there is the embankment; the outside slope of the embankment.

Q. How wide is this embankment at the top?

A. It should be twenty feet approximately.

Q. Should be; do you know how much it is?

A. I have never measured it, but that is the rule; that is the regulation width, and we estimate and try to keep the banks about that wide.

Q. You do not know of your own knowledge in this particular case?

A. No, I never have measured; that is the top of the embankment, you understand.

Q. And the base is how much?
A. The base, I should think——
Q. State, only, if you know.
A. I do not know but it should be about fifty feet.
Q. Now, Mr. Dunn, do you know anything of your own personal knowledge as to the line of title of the Yazoo & Mississippi Railroad?
118 A. No, I could not answer that.
Q. Do you know whether they owned title when they went in?
A. No, I don't know anything about it.
Q. You don't know, in fact, at all. I suppose the number of trains run on this track have increased gradually in recent years?
A. Yes, business has increased steadily for twenty years that I know of.
Q. I suppose in 1884 or 1882, there was comparatively few trains on that track?
A. Well, I don't know that it was in operation and working in 1882.
Q. When was it opened for business?
A. I don't know that either; I know that it was in 1884, and probably in operation prior to that time—some little time.
Q. But did comparatively little business?
A. I suppose so; I don't know anything about it. I was not with the road at that time.
Q. When did you become connected with the road?
A. With the Illinois Central in 1892.
Q. How did you get your information prior to that time?
A. I was here with the Louisville & Nashville Railroad prior to that from 1881 up to 1886, and then I was familiar with the railroad business here in the city, and I remember going out there during the Exposition in 1884; the Exposition road crossed the Yazoo & Mississippi Valley Railroad at that time.
Q. You are certain that the position of the Valley track has not been changed since 1884?
A. I believe that there is no indication that it ever has
119 been.

By Mr. LEMLE: Mr. Ory admits that the deed from Laferriere, Gele, and others did not contain any waiver of warranty.

Defendant rests.

Endorsed on back: 87850. Filed May 27/10. (Signed) John Sbisa, D'y C.

120 *Reasons for Judgment.*

Filed June 14th, 1910.

Civil District Court, Division "A."

No. 87850.

Widow ANNIE E. BREWER
vs.
YAZOO & MISS. VALLEY R. R. CO.

Reasons for Judgment.

The plff. sues Deft. to establish title to the greater portion of sq. 150 bounded by Hagan Ave. Melpomene, Clark & Thalia Streets, in this City.

The chain of title, under which both parties claim, extend- to Henry Parish, who was the undisputed owner, & common author, by title, since 1848. He died testate, in New York, & his will probated there, in Dec. 1857, was ordered executed in this State, in April 1858. By his will said property was devised to Henry Parish Conrey, who was recognized, as its owner, by particular legacy, under said will Henry Parish Conray died, & his succession was opened here & at a succession sale, provoked by his administrator said property was sold, at judicial sale, & purchased by George E. Brewer, Plff's husband, who was subsequently *was* adjudged a Bankrupt, & in the Bankruptcy proceedings, said square of ground was regularly sold to the Plff., who was separated in property from her husband, said Bankrupt.

All three successive transfers of said square of ground were recorded, at their several dates.

The effect of these proceedings was to take this square of ground, in April 1858, out of the ownership of the succession of Henry Parish to fix it in Henry Parish Conrey, and to possess title, after his death, by regular probate proceedings, to the plaintiff in this suit under this nar-ation of facts, it is plain that the derivative title, under which Deft. & its authors claim, to-wit: a sale to pay debts, obtained by the executor of Henry Parish in 1871, is an absolute nullity, for two reasons:

1st. Because the succession of Henry Parish had no title
121 to this property in 1871, it having been devised to Henry P. Conrey, by the will of Henry Parish, ordered executed, here April 11th, 1858 & having been sold to George Brewer, Plff authors, in said Conrey's succession at probate sale, on July 30th, 1860; and

2nd. Because the executor of Henry Parish had no power to sell this property, even if it had formed part of the estate of said Parish, because, in his petition for the sale, he alleged that there *was* no debts to be paid & the will, for from authorizing him to sell this property, had devised it to Henry P. Conrey. (P c c 1668, 1669) & Henry

P. Conrey had been recognized as owner by particular legacy, & it had been sold to Pl'ff's author, in July 1868, in Conrey's succession eleven years before this pretended sale by Executor of Hy. Parish, in 1871, under which the author of Debt title claims.

The objection to the terms of the particular bequest to Henry Parish Conrey, in clause 6 of the will of Henry Parish, to-wit: that it contains a prohibited trust, is without effect, under Rcc. 1519. The trust part of this clause is to be eliminated, as not written, & the bequest to the particular legatee, H. P. Conrey, had its full legal effect.

On the issue of title, therefore, it seems clear that Plff. is the absolute owner of the property in dispute, and that the author of Def't's claim never had legal title thereto.

The question remains, had the Deft. a title by prescription. This brings up the issue of possession.

The proof is that the Deft. Co. in 1882, without expropriation proceedings, laid its tracks diagonally across this square of ground. It asked leave of no one. By the "frontierman's writ," it occupied enough of this square, to lay its tracks. This act was a trespass. It did not confer the fee to the occupied right of way. The deft. obtained, what it took, (the owner not resisting), the servitude of way, over the ground built upon, subject to the owner's right to damages.

It has occupied this narrow right of way, it has exercised
122 this servitude ever since, but beyond its narrow limits, the Deft. has exercised no other possession, by outward affirmative acts, over any other part of the property claimed by Plff.

Def't's plea of prescription, based on actual possession of any portion of said property, outside of the narrow belt, on which rest its railway tracks, is without legal foundation, & fails.

It fails, even as to the narrow belt, occupied by its tracks, if that occupancy be advanced, in aid of the title, which it acquired in 1898 from Laferriere & the Geles, because of the bad faith, in which its tortious possession, as a trespass, began in 1882.

In 1898, Def't purchased from the Geles & Laferriere & recorded the Act of purchase. The Deft. vendors had never exercised any acts of possession, over the part of the square No. 150, which the Plff. claims in this suit. They & their vendors, had exercised certain rights of possession, through their tenants of two or three shanties, that had been erected years ago, on the square but these shanties were & are on parts of the square not involved in this suit between Pl'ff & Def't.

It is argued that the Geles & Lafferiere having a recorded title to the whole square, this possession, through their tenants, of the parts, when said shacks had been erected, was possession of the whole area, called for their title under RCC 3437.

They claim that the possession of a part with title to the whole, *in* possession of the whole.

This recognized rule is not applicable to the facts of the case.

The rule is that constructive possession where, there is conflict between recorded title, follows the better title.

If the holder of the perfect title, having the constructive posses-

sion, as a sequence occupies a part, this occupancy *of* all, that
123 is called for, by the title.

If the holder of the rival, inferior or bad, title, takes possession of a part, his possession extends not an inch beyond his actual occupancy. He is a trespasser upon the rights of the true owner, quoad the part that he takes possession of for he is without right, but if the true owner does not resist & he (the trespasser) has a recorded title, giving apparently it & is in good faith the possession, though wrongful, may ripen into a title by prescription—but, in no notable event, can such actual possession, have any effect, beyond the exact limits, of its exercise, upon the rights of the true owner. See John T. Moore Planting Company Limited, vs. Morgan La. & Tex. R. R. & S. S. Co. Decided by the Supreme Court Mch. 28, 1910, & authorities therein cited.

It follows that Deft. & its authors, Laferriere & Geles and their authors, have had no constructive nor Civil possession of the land, for which Plff. sues.

Having had neither actual possession nor Civil possession under recorded deeds, there is no basis, on which can rest the prescription pleaded by Deft. & the several warrantors.

Therefore judgment must be given Plff's favor subject Def't's right of way, but with a non-suit as to the money demanded.

As to the call in warranty, I find no proof, which can support a judgment for anything beyond costs.

There is no proof of the amount of the purchase price paid by Def'ts to its vendors. Then again, Def't's vendors Laferriere & Geles purchased from Recurt for a lump price, the property in controversy here along with eight other tracts of land of obviously unequal values & the area which is not calculated or apparent. The same is true of Recurt purchase from Babcock. While Deft. seems entitled to a judgment, in warranty, against *his* vendors & they in turn against their vendors, & *he* in turn against *his* vendors as it should seem from the various deeds, there is no proof by which I can fix the amount to be paid quoad the fraction of the square herein in-
124 volved. I can therefore only reserve *this* rights respectively.

A proper judgment will be entered.

N. O. La., June 8th, 1910.

(Signed) T. C. W. ELLIS, *Judge.*

Judgment.

Civil District Court, Division "A."

No. 87850.

Mrs. Annie E. Brewer
vs.
Yazoo & Miss. Valley R. R. Co.

Judgment.

This cause having been heretofore heard and submitted for adjudication and the Court considering the law and the evidence to be in favor of plaintiff and against the defendant, and in favor of defendant and against its warrantors, and against the various parties called in warranty by the parties to whom they had respectively warranted, to the extent hereinafter set forth, for the reasons contained in the written opinion of the Court:

It is ordered, adjudged and decreed that there be judgment in favor of Plaintiff, Mrs. Annie E. Brewer, and against the defenant the Yazoo & Mississippi Valley Railroad Company, decreeing plaintiff to be the owner (subject to a servitude in favor of defendant Railroad Company, of passage and for railroad purposes generally, extending twenty-five feet on each side of the center of defendant's track now traversing said square) of the portion of square One Hundred and Fifty, in this City, bounded by Hagan Avenue, Violet (or Clark) Melpomene and Thalia Streets, in the Sixth District of this City, measuring and described as follows:

Commencing at the corner of Hagan Avenue and Melpomene Street, the portion measures Two hundred and twenty-three feet, nine inches front on Hagan Avenue, up to the corner of
125 Thalia Street, thence at a depth along Thalia Street of thirty-five feet, running towards Clark Street, thence on a line having a curve of four degrees and running towards Clark Street and reaching to Clark street at a point on said Clark Street of eighty-three feet, six inches distant from the corner of Clark and Melpomene Street-, thence along said Clark Street a distance of Eighty-three feet six inches up to the corner of Melpomene Street, and thence a depth and front on Melpomene Street of two hundred and twenty seven feet seven inches up to the point of beginning, at the corner of Melpomene Street and Hagan Avenue.

It is further ordered, adjudged and decreed that there be judgment in favor of the defendant, the Yazoo & Mississippi Valley said Yazoo & Mississippi Valley Railroad Company, for all costs of this suit, and that the claim of plaintiff for damages be dismissed, as in case of non-suit.

It is further ordered, adjudged and decreed that there be judgment in favor of the defendant, the Yazoo & Mississippi Valley Railroad Company and against its warrantors, Etienne Gele, Wm.

Laferriere, Mrs. Caroline Gele, Widow of Jean M. Gele, Mrs. Catherine Gele, Wife of Gaspar Pietri, and Gaspar Pietri, her husband to authorize her, Mrs. Leontine Gele, wife of John G. Fahrman and said John Fahrman, her husband to authorize her, Mrs. Theresa L. Gele, wife of Robert H. Smith, and said Robert H. Smith her husband, to authorize her, and John G. Gele, for costs of this suit, and that all other claims of the Yazoo & Mississippi Valley Railroad Company, against its said warrantors be dismissed as in case of non-suit.

It is further ordered, adjudged and decreed that there be judgment in favor of the said Etienne Gele, Wm. Laferriere, Mrs. Caroline Gele, widow of Jean M. Gele, Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri, her husband, to authorize her Mrs. Leontine Gele, wife of John G. Fahrman, and said John Fahrman, her husband to authorize her, Mrs. Theresa L. Gele, wife of Robert H. Smith, and said Robert H. Smith, her husband
126 to authorize her, and John G. Gele, and against Bernard Recurt, for costs of this suit, and that all other claims of the said Etienne Gele, Wm. Laferriere, Mrs. Caroline Gele, Mrs. Catherine Gele Pietri, Mrs. Leontine Gele Fahrman, Mrs. Theresa Gele Smith and John G. Gele against the said Bernard Recurt, be dismissed as in case of non-suit.

It is further ordered, adjudged and decreed that there be judgment in favor of Bernard Recurt and against Mrs. Marie L. Shute, widow of George W. Babcock, Dr. George C. Babcock, the Hibernia Bank & Trust Company, Curator of Miss Cora L. Babcock, interdict George B. Leverich and Miss Louise F. Leverich, for the costs of this *this* suit, and that all other claims of the said Bernard Recurt, against the said Mrs. Marie L. Shute, widow of George W. Babcock, Dr. C. Babcock, the Hibernia Bank & Trust Company, Curator of Miss Cora L. Babcock, Interdict, George B. Leverich, and Miss Louise F. Leverich be dismissed as in case of non-suit.

Judgment read and rendered in open Court on June 13th, 1910.

Judgment signed in open Court June 17th, 1910.

(Signed) T. C. W. ELLIS, *Judge*.

Motion of Appeal.

Filed June 24th, 1910.

Civil District Court, Division "A."

No. 87850.

Mrs. ANNIE BREWER
vs.
YAZOO & MISS. VALLEY R. R. Co.

On motion of Yazoo & Mississippi Valley Railroad Company, and Etienne Gele; William Laferriere; Mrs. Caroline Gele, widow of

Jean M. Gele; Mrs. Catherine Gele, wife of Gaspar Pietri and Gaspar Pietri, her husband, to authorize her, Mrs. Leontine Fahrman, wife of John G. Fahrman, and John G. Fahrman, her husband, to authorize her; Mrs. Theresa L. Gele, wife of Robert H. Smith, to
127 authorize her; John G. Gele; Bernard Recurt; Mrs. Maria Babcock; the Hibernia Bank & Trust Company, curator of Miss Cora L. Babcock, Doctor George C. Babcock, Interdict; Succession of Mrs. Mary A. Leverich, through her sole heirs, George B. Leverich and Miss Louise Leverich, defendant and warrantors herein, appearing through their counsel; and on suggesting to the Court that movers are aggrieved by the judgment herein rendered on Monday, June 6th, 1910, and signed on the 17th day of June, 1910, in favor of Mrs. Annie Brewer, plaintiff herein, and that said judgment is contrary to the law and the evidence, and that mover desires to appeal suspensively and devolutively from the said judgment to the Supreme Court of the State of Louisiana.

It is ordered that a suspensive*ly* and devolutive appeal be granted to the said Yazoo & Mississippi Valley Railroad Company defendant herein, and the warrantors above named, returnable to the Supreme Court of the State of Louisiana on the 1st Monday of August, 1910, upon mover furnishing bond, with good and solvent security in the sum of Five Thousand Dollars.

(Signed) FRED D. KING,

Judge Civil District Court, Parish of Orleans, Div. "B," Acting for the Hon. T. C. Ellis, Judge of Div. "A," Now Absent on Leave.

Appeal Bond.

Filed June 24th, 1910.

Know all men by these presents that we, Yazoo & Mississippi Valley Railroad Company, Etienne Gele, William Laferreire, Mrs. Caroline Gele, widow of Jean M. Gele, Gasper Pietri, and his wife Catherine Gele; J. G. Fahrman and his wife Leontine Gele; Robert H. Smith and his wife Theresa L. Gele; John G. Gele; Bernard Recurt; Mrs. Maria Babcock; George C. Babcock; Hibernia Bank & Trust Company George B. Leverich and Louise Leverich as principals and Gustave Lemle, B. Ory & W. W. Wright as sureties are held and firmly bound unto Thom*sa* Connell, Clerk of the Civil District Court, for the Parish of *Parish*, his successors, executors administrators and assigns, in the sum of five thousand
128 ($5000) Dollars for the payment *sh*ereof we bind ourselves, our heirs, executors and administrators firmly by these presents sealed with our seal and dated in the city of New Orleans on this 24th day of June in the year of Our Lord one thousand nine hundred and Ten.

Whereas the above bounden Yazoo & Mississippi Valley Railroad Company, Etienne Gele; Wm. Laferierere, Mrs. Caroline Gele, widow of J. M. Gele; Gasper Pietri and his wife Catherine Gele; J. G.

Fahrman, and his wife, Leontine Gele; Robert H. Smith and his wife Theresa Gele John G. Gele; Bernard Recurt; Mrs. Maria Babcock, George C. Babcock; Hibernia Bank & Trust Company; Geo. B. Leverich and Louise Leverich, have this day filed a motion of appeal from a final judgment rendered against them in the suit of Mrs. Annie E. Brewer vs. Yazoo & Mississippi Valley Railroad Company No. 87,850, of the Civil District Court, for the Parish of Orleans, on the 6th day of June 1910, and signed on the 17th day of June 1910.

Now the condition of the above obligation is such; that the above bound principals shall prosecute their suspensive and devolutive appeal, and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by proceeds of their estate real or personal of they be cast in the appeal; otherwise that the said Gustave Lemle Beny Ory and W. W. Wright, shall be liable in their place.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,

(Signed) By GUSTAVE LEMLE, *Att'y.*

ETIENNE GELE,
WM. LAFERRIERE,
MRS. WID. CAROLINE GELE,
GASPAR PIETRI AND
CATHERINE GELE, *His Wife,*
JOHN G. FAHRMAN AND
MRS. LEONTINE GELE, *His Wife,*
ROBERT H. SMITH AND
MRS. THERESA L. GELE, *His Wife,* AND
JOHN G. GELE,

(Signed) By BENJAMIN ORY, [SEAL.]

129 MARIA BABCOCK,
DR. GEORGE C. BABCOCK,
HIBERNIA BANK & TRUST COMPANY, *Curator;*
CORA L. BABCOCK,
LOUISE F. LEVERICH,
GEORGE B. LEVERICH,

By WM. WINN WRIGHT &
G. T. BEAUREGARD, *Att'ys.*

(Signed) BENJAMIN ORY.
(Signed) GUSTAVE LEMLE.
(Signed) WM. WINN WRIGHT.

Signed, sealed and delivered in the presence of—

(Signed) A. A. MORENA.

Transcript of Record No. 92721 of the Docket of the Civil District Court, Parish of Orleans. Transferred from the Late Fourth District Court Under No. 1966, Entitled P. Conrey, Jr., & al, vs. V. C. Currell. Offered in Evidence By Counsel for Plaintiff (Certified Copy).

Filed May 26th, 1910.

Fourth District Court.

No. 1966.

P. CONREY JR., *et* —
vs.
V. C. CURRELL.

Transferred to the Civil District Court Under No. 92721, Division "C."

Petition for Partition. Filed 7th Sept., 1848.

To the Honorable the 4th District Court of New Orleans:

The petition of Peter Conrey, Jr., and Wm. A. Gasquet, residing in this City humbly shows:

That Petitioner and Madame Victorine Cruzat Curell who resides in this City, are the owners of all and singular the certain lot or parcel of ground situated in the Parish of Jefferson in this State and designated by the No. 2 on a plan of five lots of ground of various sizes drawn by Charles F. Zimple, Deputy City Surveyor on April 7th, 1883 and deposited in the office of T. Guyol, Esq., succession of F. Grima late Notary Public, in this City and lot of ground contains One Hundred and Eighty one acres and belongs to petitioner and Madame Curell in the following proportions, to-wit:

To Madame Curell five twenty fourths, to Peter Conrey, Jr., five twenty fourths to Me. A. Gasquet the balance.

Your petitioners aver that they do not wish to hold said
130 property any longer in common with Madame Currell; but that they wish said property may be divided, and they therefore pray said Madame Curell to be cited herein, that experts be appointed to examine said property and divide it and that the division may take place before Joseph F. Beard a Notary Public for this City and for general relief.

(Sg.) LOCKETT & GOOLD, *Att'ys.*

I have no objections to the prayer of the petitioners being granted. N. O. Sept. 6, 1848.

(Sg.) VICTOR CURELL.

Witness- by
(Sg.) G. CRUZAT.

Judgt. Decreeing Partition 7th Sept., 1848.

The Court considering the petition and the consent of the Deft.
It is ordered, adjudged and decreed that a partition of the property held in common by the parties to this suit take place in the manner pointed out by law.

It is further ordered, adjudged and decreed that John Calhoun and Henry Peyhand be and they are hereby appointed experts to examine and report to this Court if the said property be susceptible of division in kind.

Judgment rendered and signed this 7th Sept., 1848.

(Sg.) GEO. STRAWBRIDGE,
Judge 4th District Court.

Petition to Homologate, etc.

Filed Nov. 3rd, 1848.

To the Honorable the Fourth District Court of New Orleans:

The petition of Peter Conrey, Jr., and Wm. A. Gasquet humbly shows:—That the portion of the property which is the subject of his suit in the name of Wm. A. Gasquet belongs to Henry Parish, Daniel Parish, Wm. A. Gasquet and James A. Gasquet in the foling proportions:

131

To Henry Parish	14/96
To Daniel Parish	14/96
To Wm. A. Gasquet	14/96
To Jas. A. Gasquet	7/96
To Peter Conrey, Jr.	7/96

said property belongs to a late commercial firm of which these parties were members. The whole property belongs as follows, to-wit:

P. Conrey, Jr.	27/96
V. Curell	20/96
H. Parish	14/96
Wm. A. Gasquet	14/96
G. A. Gasquet	7/96
D. Parish	14/96

And James A. Gasquet, Henry Parish, Daniel Parish join in the petition herein filed and together with Plffs. Pray for a division of the property in pursuance of the report of the experts, allowing to each owner the square appointed to him by the said experts and for general relief.

(Sg.) LOCKETT & GOOLD.

Judgment of Partition. Rendered 4th November, 1848.

Fourth District Court.

PETER CONREY, JR., & al.
vs.
V. C. CURELL.

The Court considering the petition and answers in this case and the report of the experts now adjudges and decrees that the said report be homologated and confirmed and that Peter Conrey Junior be decreed owners of squares No-. 127, 128, 129, 130, 131, 132, 133, 134, 142, 141, 140, 139, 138, 137, 136, 135—Letter "A" 143-144.

Victorine Curell be decreed owner of squares No-. 112, 115, 111, 106, 105, 98, 99, 116, 117, 118, 125, 124, 123, 122, 121, 132 120, 90, 83, 126.

Henry Parish be*ing* decreed owner of squares No-. 145, 146, 147, 148, 149, 150, 158, 157, 156, 155, 154, 153.

Daniel Parish be decreed owner of squares No-. 170, 169, 168, 167, 166, 173, 174, 175, 176, 177, 178, 179, A 185, 184, 183, 182.

James A. Gasquet be decreed owner of squares No-. 181, 180, B 185, 186, 187, 188, 189, 196, 194, 193, 192, 191, 195, 196, 197, 198 Letter C. 200-199 as appears by a plan drawn by Benjamin Buisson, dated 17th February, 1846 deposited in this Court and that the costs of suit be paid in equal portions by the parties.

Judgment rendered and signed 4th Nov. 1848.

(Signed) GEO. STRAWBRIDGE,
Judge 4th Dist. Court.

A true Copy.

(Signed) J. G. LYNCH,
D'y Clerk.

Record in the Succession of Henry Parish, No. 32065 of the Docket of the Late Second District Court, Transferred to the Civil District Court for the Parish of Orleans, under No. 79241, Marked for Identification "P-2." Offered in Evidence by Counsel for Geles et als.

Probate and Will.

Filed April 11th, 1868.

No. 32065.

Second District Court.

Succession of HENRY PARISH.

At a Surrogate's Court Held in and for the County, at the Surrogate's Office, in the City of New York, on the Seventeenth Day of December, in the Year One Thousand Eight Hundred and Fifty-seven.

133 Present: Alexander W. Bradford, Esq., Surrogate.

In the Matter of Proving the Last Will and Testament of HENRY PARISH, Deceased.

The citation in this matter, having been duly issued, served, and returned such proceedings were thereupon had that the proof was duly taken and the allegation of the parties appearing having been heard, and after hearing Francis B. Cutting, Esq., and William M. Evants, Esq., of counsel for the executor propounding said will for probate John W. Edmonds, Esq., Counsel for Mrs. Martha Sherman, and Ann Parish two of the heirs at law next to kin of the testator and Charles O'Conor, Esq., and James T. Brady, Esq., of counsel for Daniel Parish and James Parish two of the heirs at law and next of kin of the testator and matured deliberation being thereupon had. It is decided, ordered, adjudged and decreed that the instrument in writing offered for probate in this matter purporting to be the last Will and Testament of Henry Parish deceased and bearing date the twentieth day of September in the year one thousand eight hundred and forty-two, and the instrument in writing offered for probate in this matter purporting to be a codicil to said will and bearing date the twenty ninth day of August in the year one thousand eight hundred and forty nine together make, constitute and form the last will and testament of Henry Parish deceased and the same are hereby admitted to probate as a will of real and *pre*sonal estate, and *if* it is further decided, ordered adjudged, and decreed that the instrument in writing offered for pro[illegible]te in this matter purporting to be a further codicil of said will and bearing date the fifteenth day of September in the year of one thousand eight hundred and fifty three and the instrument in writing in this matter offered for probate purporting to be a further codicil to said will and bearing date

the fifteenth day of June in the year one thousand eight hundred and fifty four, do not make, constitute or form any part of
134 the said last will and testament of the said Henry Parish deceased, and probate of the said two instruments in writing lastly above mentioned, is hereby refused and denied and it is further decided, ordered, adjudged and decreed that the reasonable costs and expenses of the parties in this matter to be certified and allowed by the Surrogate be paid out of the estate of Henry Parish deceased.

In the name of God Amen. I, Henry Parish of the City of New York, Merchant do make publish and declare the following as my last — and Testament. First I, give and devise and bequeath unto my beloved wife Susan Maria the house and lease of the lot now known as No. 49 (Forty nine) Barclay Street in the City of New York, Where I, now reside (call- Lot No. 200 in the lease from Columbia College to me dated the first day of May One Thousand eight hundred and Thirty) with all my right and interest into and under the same; and also after the decease of my friend and relative Mrs. Catherine Payne the House and lease of the lots now known as No. 88 (Eighty eight) Chamber Street in the said City of New York, In the lease from St. Peter Church, called Lot No. 429 of the Church form assigned to me by Joseph Lands by assignment dated the Second day of April one thousand eight hundred and thirty one with all my right and interest into and under the same. I also give devise and bequeath unto *m*a said wife, in fee, the following real estate situated in the City of New York to-wit:

The store and lot now known as No. 54 (Fifty four) Pine Street (which was conveyed to me by George Luckley and Daniel Oakey by deed dated the first day of May, one thousand eight hundred and thirty six) And my equal undivided half of the lot and store now known as No. 160 (One hundred and Sixty) Pearl Street, the other half of which is owned by Joseph Kernochen a correct map of which said lot No. 160 Pearl Street, and also of Lot No. 162 Pearl Street and Lots Nos. 124 and 126 Waters Street hereinafter mentioned and devised made by Joseph F. Bridges City Surveyor dated the tenth day of September 1842, and certified to be correct by Joseph
135 Kernochan and myself is now on record in the office of Register of the City and County of New York. I also give devise and bequeath unto my said wife in fee the following real estate situated in the City of New Orleans, and which was allotted to me or fell to my share *a*n a division of a part of the real estate belonging to my late firm of Gasquet Parish & Co., of New Orleans, which division was made in Marsh last (1842) to-wit: A store and lot of ground fronting on Tch*api*toulas Street nest to the corner of Laffayett and adjoining ground, now or late of T. Banks being about thirty two feet and three inches wide in front by ninety two feet and three inches and one quarter of an inch deep; A store and lot of ground situated at the corner of Tch*api*toulas Street and Lafayette Street fronting on Tch*api*toulas Street being about twenty one and three inches and three quarters of an inch wide in front and ninety

feet and six inches and one quarter of an inch deep on Lafayette Street.

A lot of ground fronting on Camp Street being about twenty five feet nine inches wide in front by one hundred and fifty feet deep: And Three lots of ground fronting on St. Joseph Street each about twenty feet two inches wide in front by one hundred feet deep. Second I, also give devise and bequeath unto my said wife all my household furniture, including all my silver and plate wares and library of books, all houses all horses and carriages that I may own at the time of my deceased; and also my pew (No. 98) in the Grace Church, in the City of New York.

Third. I give devise and bequeath unto my executor hereinafter named and to the survivors & survivor of them, or to such of them as m-y qualify and act as such, the sum of Two Hundred thousand dollars of my personal estate, In trust, to invest or keep invested that amount in bonds & Mortgages on un-cumbered real estate or in the stock of the City of New York, or the State of New York or of the United States, and to pay or apply the interest or income thereof to the sole and separtate use of my said wife during her natural life, and upon the decease to pay over said sum of two Hundred thousand Dollars as my said wife shall by her last Will & Testament
or writing in the nature of Last will and testament direct
136 and appoint.

Fourth. I give devise and bequeath unto my nephew and namesake Henry Parish, son of my brother, Daniel Parish, in fee, my undivided one half of the lot and store now known as No. 162 (One Hundred and Sixty two) Pearl Street in the City of New York, the other half of which is owned by Joseph Kernochen; And also my undivided one third part of the store and lot -now- as No. 172 (One Hundred and Seventy two) Pearl Street, corner of Pearl Street in the said City of New York, the remaining two thirds of which are owned by the said Joseph Kernochen and Daniel Parish.

Fifth. I give devise and bequeath unto my namesake Henry Parish Kernochan, son of my friend Joseph Kernochan, in fee, my undivided half of the two lots and stores now known as Nos. 124 (One Hundred and Twenty four) and 126 (One Hundred and twenty six) Water Street in the City of New York, the other half of which is owned by the said Joseph Kernochan.

Sixth. I give, devise, and bequeath unto my friend Peter Conrey of New Orleans, all my part or share of or interest in the undivided real estate situated in the State of Louisiana belonging to my said late firm of Gasquet, Parish & Co., in trust to convey the same or to pay over the proceeds thereof to my namesake Henry Parish Conrey, son of the said Peter Conrey; a part of which undivided real estate is situated in Jefferson Parish in the said State of Louisiana, and the balance (about three thousand and five hundred acres of land) in said State; It being my wish that the liquidating partners of my said late firm should be allowed, if they should think best to sell said undivided real estate and pay over the proceeds to the said Peter Conrey, and in case the said real estate should be divided it is my wish that the portion allotted or set apart to me shall be con-

veyed to my said namesake; my desire being not by this devise or bequeath to embarrass my late partners in the liquidation or settlement of the estate of my said late firm.

Seventh. I give devise and bequeath unto my friend and relation Mrs. Catherine Payne of the City of New York the house and lease of lot now known as No. 88 (Eighty eight) Chamber Street
137 in the City of New York, now occupied by her (which after her death, I. have hereinbefore given to my wife) to have and to hold the same during her natural life, I. also give devise and bequeath unto the said Catherine Payne an annuity of One Thousand Dollars, to be paid to her, half yearly during her natural life; the first five hundred dollars to be paid to her at the experation of six months after my decease and the like sum of five hundred dollars to be paid to her every six months thereafter during her life. The premium of insurance ground rent and taxes of said house and lot are during the lifetime of said Catherine Payne to be paid by my executors.

Eight. I give devise and bequeath unto my Executors hereinafter named and to the survivors or survivor of them or to such of them as may qualify and act as such the sum of Twenty thousand Dollars of my personal estate, in trust, to invest or keep invested that amount in bonds and mortgages or unencumbered real estate or stock of the City of New York or of the State of New York, or of the United States & to pay or apply the interest or income thereof to the sole and separate use of my sister Ann Parish, during her natural life, and upon her decease to pay over the said sum of twenty thousand dollars as my said Sister shall by her last Will and Testament, or writing in the nature of a last Will and Testament direct and appoint.

Ninth. I give devise and bequeath unto my Executors hereinafter named and the survivors and survivor of them or to such of them as may qualify and act a further sum of Twenty thousand dollars, In trust, to invest or keep invested that amount in bonds and mortgages or unencumbered real estate, or in the stock of the City of New York, or of the State of New York, or of the United States, and to pay or apply the interest & income thereof to the sole and separate use of my Sister Martha Sherman wife of Allen M. Sherman, during her natural life, and upon her decease to pay over the said sum of Twenty thousand Dollars to lawful issue the issue of
138 any decease- child, to take the share of the decease- parent: and in case my said Sister shall die without leaving any lawful issue then in trust to pay over the sum of twenty thousand dollars as my said sister may by last Will and Testament or writing in the nature of a Last Will and Testament direct and appoint.

Tenth. I give devise and bequeath unto each of my executors hereinafter named to-wit: Daniel Parish, Joseph Kernochan, Joseph Delafield, Henry Delafield and William Delafield or to each of them who shall be living at the time of my decease the sum of Ten Thousand — to be received or retained by them in lieu of all commissions or compensation as such executors and which Ten thousand

dollars is to be received whether he qualifies and acts as such executors or not.

Eleventh. The provision- herein made for my wife *or* intended by me and are to be accepted by her in lieu of her dower in my estate.

Twelfth. After the expiration of two years from my decease and after the foregoing provisions of my will shall have been fully provided for and complied with or my executors shall be satisfied that they can fully comply with said provisions & also with the provisions hereinafter made, if the residue of my estate shall amount to or exce*ed*ed, The sum of Two Hundred and Ten Thousand Dollars, then, I give devise and bequeath the said further sum of Two Hundred and Ten Thousand Dollars to my executors hereinafter named and the survivors and survivor of them or to such of them as shall qualify and act, In trust, to pay my Nephews John H. Parish, and Daniel Parish Junior (Sons of my Brother Daniel Parish) and Jacob Parish and Thomas Parish (Sons of my Brother James Parish) respectively and to each of them, who shall be then Twenty-one years of age, the sum of Ten Thousand Dollars thereof; And if either of my said Nephews shall be then under twenty one years of age, then in trust, to pay or apply the interest or income of the sum of Ten Thousand Dollars, to his use until he comes of age; And — my said Nephews shall respectively attain the age of twenty one years, then to pay over to each of them the said sum of
139 Ten Thousand Dollars; And upon the further trust to pay over or apply to the sole and separate use of each of my *Nei*ces, Sarah E. Parish, Mary P. Parish, Anna Parish, Susan D. Parish and Margaret H. Parish (Daughter of my Brother Daniel Parish) and Mary Louise Parish Henrietta F. Parish, Elizabeth Parish and Jane Ann Parish (Daughters of my Brother James Parish) the interest and income of the like sum of Ten Thousand Dollars thereof during their natural lives; And upon the further trust to pay or apply to the sole and separate use respectively of my Cousin Mrs. Margaret E. Kernochan Wife of Joseph Kernochan, Of Mrs. Julia Delafield, wife of Joseph Delafield, of Mrs. Harriet Delafield, wife of John Delafield, of Mrs. Eliza Delafield, wife of Rufus K. Delafield, of my Cousin Mrs. Mary P. Abeel, wife of James Abeel, and of Miss Emma Delafield, and of each of them during their natural life, the interest or income of a like sum of Ten Thousand Dollars; and upon the further trust to pay to each of my friends Doctor Edward Delafield and Major Richard Delafield, the sum of Ten Thousand Dollars thereof. And in case the said residue of my estate at or after the expiration of two years from my decease and after fully complying with the provisions of my will shall not amount to the said sum of two Hundred and Ten Thousand Dollars, then I give devise and bequeath the rest residue and remainder of my estate to my executors and to the survivors and survivor of them or to such of them as shall qualify and act, In trust, to divest and appropriate, and, pay or apply the same, or the interest or income thereof in the manner, and to or for the use of the persons above in this the twelfth clause of my Will, specified so that each of

the persons named as devisees — legatees in this clause of my will, shall receive, if a male one equal twenty first part of such rest residue and remainder of my estate, or if a female the interest and income of the like twenty first part of such rest, residue and remainder of my estate, And in case of the death of either of the persons named as devisees or legatees in this clause of my will leaving lawful issue such issue is to receive the principal sum herein directed to be paid to or hold for, such devisees or legatees; And in case of the death
140 of either of said persons named as devisees or legatees in this clause without lawful issue, then such principal sum in each case is to be paid over as the deceased devisee or legatee shall be last will and testament, or in writing in the nature of a last will and testament direct and appoint. It being my intention that the bequests or legacies in this clause of my will made or given to my said Nephews should become vested in them when they respectively attain the age of Twenty one years and not before. Interest is to be paid or allowed upon all of the bequests or legacies contained in this clause of my Will from — after the expiration of two years from my decease but not sooner. And my executor shall not be required by any of the devisees or legatees named in this clause to pay any of the said bequests or legacies or any part thereof until such reasonable time after the expiration of said two years from my decease as my said executors shall see fit, being governed by the condition of my estate but my executors are authorized to pay the said bequests or legacies or any part thereof as soon after but not before the expiration of the said two years from my decease, as they shall deem proper and expedient.

Thirteenth. I give devise and bequeath, all the rest residue and remainder of my estate of every nature and description after all the devises bequests or legacies hereinbefore specified shall have been fully paid or provided for, and after the preceeding provisions of my will shall have in all respects been fully complied with to my Brothers Daniel Parish and James Parish equally share and share alike and in case of the decease of either his share is to go to his lawful issue.

Fourteenth. It is my will and intention that all of the property real and personal that I may own or possess at the time of my decease, shall pass under this Will. Whether the same be now owned or possessed by me or may be hereafter acquired by purchase descent distribution or otherwise. And I hereby authorize my said executors and the survivors and survivor of them or such of them as shall qualify and act, to sell and convey any real estate that I may
141 own or possess at the time of my decease and not hereinbefore devised or disposed of.

Fifteenth. And in as much as the devises & bequests herein contained of real estate situated in the state of Louisiana may prove insufficient to vest the same as I have hereinbefore provided, it is my will that my heirs at law by whom the said real estate would be inherited in case it should not pass under this Will do release or convey the same in conformity with the devises thereof contained in

this will and the devises and bequests and legacies contained in this will to or for the benefit of any said heirs at law are made upon the express condition that my said heirs shall so release or convey the said real estate in Louisiana in case it should become necessary or proper in order to carry my will in respect to said real estate into effect; and in case my said heirs at law should not so release or convey said real estate in Louisiana, I revoke the provisions herein made for them & I give devise and bequeath the sum & property hereinbefore devised bequeath- or given to them or to my executor for their benefit, to my wife, except the sum of five thousand dollars which I give to my said namesake, Henry Parish Conrey, in lieu and stead of the provisions hereinbefore made for him.

Sixteenth. I nominate and appoint my Brother Daniel Parish & my Friends Joseph Kernochan & Joseph Delafield to be three of the executors of & trustees under this my last Will & Testament, and in order to give as little trouble as possible to my executors, I desire the said Three to first qualify and act as such; And, I also nominate and appoint my Friends Henry Delafield & William Delafield to be two additional executors & Trustees, and I desire them to qualify and act as such executors and trustees, whenever any two of the three first named executors and trustees shall be decease- or shall become for any reason unable or incompetent to perform the duties of such executors and trustees.

HENRY PARISH.

[L. S.] Signed, sealed published & declared by the testator and for his Last Will and Testament in our presence who at his request & in his presence and in the presence of
142 each other have hereunto subscribed our names and places of residence as witnesses thereto at the City of New York, this Twentieth day of September One Thousand Eight Hundred and Forty two.

CHARLES G. HAVENS,
No. 9 Nassau Street, New York.
WM. EDWARD SAUNDERS,
Wooster Street, New York.

I, Henry Parish by way of Codicil to my last will, give *give* to my dear wife in fee simple the following lands; namely the lands on which my dwelling House, Conservatory, Stable and the adjoining dwelling on Broadway or erected situated at the corner of Broadway and Seventeenth on Union square, and the rear lot in Eighteenth Street— Also the lands and buildings owned by me in Wall Street, now known as *as* No. 67, Wall Street. In witness whereof, I have sub-cribed th-se presents as a codicil to my will this Twenty ninth day of August in the year of Our Lord, One Thousand eight Hundred and Forty-nine.

HENRY x PARISH.

Subscribed by Henry Parish as a codicil to his Will and declared

by him as such in our presence attesting the same at his request The contents having been read to and understood by him.

E. HOLBROOK,
North-east Corner 4th Avenue & 18th Street.
DANIEL D. LORD,
19 *Street, New York City.*
DANIEL LORD,
26 *Beach Street, New York.*

Signed by me by direction of H. Parish.

DANIEL LORD.

His
HENRY x PARISH.
Mark.

On this Seventeenth day of December 1849, Henry Parish, again, subscribed the above in our presence, it having been again read to him and he declared that he had signed it as a codicil to his Will.

DANIEL LORD,
26 *Beach Street, New York.*
E. HOLBROOK,
N. E. Corner 4th Avenue & 18th St.

COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Daniel Parish, *I* one of the executors named in the Last Will and Testament of Henry Parish late of the City of New York, deceased, do depose and say, that I am a Citizen of the United States, over the age of Twenty one years, and a resident of the City, County and State of New York, and that I will faithfully and honestly discharge the duties of Executor of the said Last Will and Testament.

143

(Signed) DANIEL PARISH.

Sworn this 24th day of April, A. D. 1862 before me.
(Signed) H. S. DECKER,
General Clerk to Surrogate.

COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Joseph Kernochan, *I*, one of the Executors named in the Last Will and Testament of Henry Parish late of the City of New York, deceased, do depose and say that I am a citizen of the United States, over the age of Twenty one and a resident of the City, County and State of New York, and that I will faithfully and honestly discharge the duties of Executor of the said Last Will and Testament.

(Signed) JOSEPH KERNOCHON.

Sw-rn this 24th day of April, A. D. 1862, before me,
(Signed) H. S. DECKER,
General Clerk to Surrogate.

COUNTY OF NEW YORK,
Surrogate's Office, ss:

I, Joseph Delafield, one of the Executors named in the last Will and Testament of Henry Parish, late of the City of New York, deceased, do depose and say, that I am a citizen of the United States, over the age of Twenty one years, and a resident of the City, County and State of New York, and that I will faithfully and honestly discharge the duties of Executor of the said last Will and Testament.

(Signed) JOSEPH DELAFIELD.

Sworn this 24th day of April A. D., 1862 Before me,
(Signed) H. S. DECKER,
General Clerk to Surrogate.

The People of the State of New York to all — whom these presents shall come or may concern:

Know ye, That at the County of New York, on the Sixteenth day of December in the year of our Lord one thousand Eight
144 Hundred and Fifty seven before A. W. Bradford, Esquire, Surrogate of our said County, the Last Will and Testament of Henry Parish deceased, was proved, and is now approved and allowed by us, and the said Henry Parish being at or immediately previous to his death an inhabitant of the County of New York, by means whereof the proving and registering said Will and the granting administration of all and singular the goods, chattels and credits of the said Testator and also the auditing allowing — final discharge the account thereof doth belong unto us the administration of all — singular the goods chattels and credits of the said deceased, and any way concerning his will, is granted unto Daniel Parish Joseph Kernochan and Joseph Delafield all of the City of New York the Executor- of the said Will named they being first duly sworn faithfully and honestly to discharge the duties of such Executors.

In testimony whereof, We have caused the Seal of Office of our said Surrogate to be hereto annexed.

Witness Edward C. West, Esq., Surrogate of our said County, at the City of New York, the twenty fourth day of *of* April in the year of our Lord one thousand eight hundred and Sixty two and our Independence the Eighty sixth.

[L. S.] (Signed) EDW. C. WEST, *Surrogate.*

The People of the State of New York to all to whom these presents shall come or may concern:

Know ye, That we, having inspected the Records of our Surrogate's Court, in and for the County of New York, do find that on the 24th day of April in the year one thousand eight Hundred and Sixty two by said Court, Letters Testamentary on the Estate of Henry Parish late of the City of New York, deceased were granted and committed unto Daniel Parish Joseph Kernochan and Joseph Delafield of the City of New York, the Executors *and* named in the

Last Will and Testament of said deceased, and that it does
145 not appear by said Records that said letters have been revoked.

In testimony whereof, we have caused the seal of Office of our said Surrogate to be here unto affixed, Witness Gideon J. Tucker; Surrogate of our said County at the City of New York, the 26th day of March in the year of our Lord, one thousand eight hundred and sixty eight.

Stamp.

(Signed) WM. B. AITKEN,
Clerk to the Surrogate Court.

STATE AND COUNTY OF NEW YORK,
Surrogate Office, ss:

I, William B. Aitken, Clerk to the Surrogate's Court of said County, do hereby certify, that I have compared the *following* copy of the order admitting Will to Probate, the Last Will and Testament and Codicil thereto, Oaths of the Executors the letters testamentary granted thereon and the certificate of said letters Testamentary in the matter of the Estate of Henry Parish deceased, with the original record thereof, now remaining in this office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.

In witness whereof I have hereunto set my hand, and affixed the seal of office of said Surrogate this 26th day of March in the year of our Lord one thousand eight hundred and sixty eight.

Stamp.

(Signed)
[SEAL.] WM. B. AITKEN,
Clerk to the Surrogate's Court.

STATE AND COUNTY OF NEW YORK,
Surrogate Court, ss:

I, Gideon J. Tucker, Surrogate of said County, and presiding Magistrate of the Surrogate's Court do hereby certify that the foregoing exemplification of the order admitting Will to probate
146 the Last Will and Testament and Codicil thereto, Oath of the Executors the Letters Testamentary in the matter of the Estate of Henry Parish deceased, is authenticated in due form, and by the proper officer.

In testimony whereof, I. have hereunto set my hand, and affixed the Seal of the Surrogate's Court this 26th day of March in the year of our Lord one thousand eight hundred and sixty eight.

Stamp.

[SEAL.] (Signed) GIDEON J. TUCKER, *Surrogate.*

Petition, Copy of Will and Decree, etc.

Filed April 11th, 1868.

Second District Court.

Succession of HENRY PARISH.

To the Hon. the Judge of the Second District Court of New Orleans:

The petit-on of Daniel Parish, a resident of the City & State of New York, respectfully shows:

That Henry Parish late of said City of N. York, departed this life, and that his last Will & Testament was duly admitted to probate & recorded, at a Surrogate's Court held in and for the County of New York, at the Surrogate's Office in the City of New York, on the 16th December 1857, and that your petitioner was appointed one of the Executors of said Will and Testament, & that he has qualified as such, according to law, & has received letters testamentary herein.

That said decedent left property in this State & within the jurisdiction of this Court.

That herewith he presents an exemplified copy of said will,
147 and of the Order & decree of said Surrogate Court thereon admitting the same to probate & of other proceedings in the premises duly had.

Wherefore petitioner prays that said exemplification be filed that said testament be registered in this Court, and that the execution thereof be ordered according to law; and for such other decree as may be lawful & proper in the premises.

(Signed) WILLIAM H. HUNT, *Att'y.*

Order.

Let the last Will and Testament of the deceased of the 17th day of September 1842, duly probated by the Surrogate's Court in & for the City of New York on the 16th day of December 1857, certified copy of said will & probate lay hereto annexed and filed, be registered and executed.

New Orleans, April 11th, 1868.

(Signed) J. W. THOMAS, *Judge.*

Petition and Order for Inventory.

Filed March 2nd, 1871.

Second District Court.

Succession of HENRY PARISH.

To the Honorable the Judges of the Second District Court of the Parish of Orleans:

The petition of Daniel Parish, Testamentary executor of the decedent, and recognized as such by decree of the Hon. Court, shows with respect: That the estate of the decedent is possessed of certain landed property situated in the late Parish of Jefferson now
148 in the Parish of Orleans, and consisting of squares of ground designated on the plan of B. Buisson late Surveyor and Civil Engineer as Nos. 145, 146, 147, 148, 149, 150, 158, 157, 156, 155, 154 & 153.

That petitioner desires to have an inventory of the said property made by Theodore Guyol, Esq., Notary Public.

Wherefore petitioner prays that it may please your Honor to order an inventory of the said parcels of land to be made by Theodore Guyol, Esq., Notary Public, assisted by experts approved by this Hon. Court and petitioner prays for all general & equitable relief.

(Signed) W. H. HUNT.
By W. O. DENEGRE, *Att'ys.*

Order.

Let the inventory herein prayed for be taken by Theodore Guyol, Notary Public, in the presence of all parties interested, and let J. L. Lewis and J. Bayon, be appointed and sworn as appraisers to value the property to be inventoried.

New Orleans Mch. 2, 1871.

(Signed) L. S. DUVIGNAUED, *Judge.*

Oath of Appraisers.

Filed March 2nd, 1871.

STATE OF LOUISIANA:

Second District Court for the Parish of Orleans.

No. 32065.

Succession of HENRY PARISH.

Before Me Joe. Garidel, Deputy Clerk — the Second District Court for the Parish of Orleans, personally came and appeared J. L.

Lewis & J. Bayon, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried herein.

So help them God.

(Signed) J. BAYON.
(Signed) J. L. LEWIS.

149 Sworn to and subscribed before me, New Orleans, March 2, 1871.

——— ———, *Deputy Clerk.*

Petition and Inventory.

Filed March 11th, 1871.

Second District Court.

Succession of Henry Parish.

To the Hon. the Judge of the Second District Court of the Parish of Orleans:

The petition of Daniel Parish Testamentary Executor of the decedent shows with respect.

That in pursuance of an order of this Hon. Court he has caused an inventory to be taken of the real estate of the said succession in this Parish, & he herewith files a duly authenticated copy of the inventory.

He prays that the same may be filed and duly homologated & he prays for such other & further orders and decrees as the nature of the case may require.

(Signed) W. H. HUNT.
By W. O. DENEGRE, *Att'ys.*

Order.

Let the Inventory a certified copy of which is this day filed be approved and homologated.

New Orleans March 11th, 1871.

(Signed) L. S. DUVIGNEAUD, *Judge.*

Inventory.

Filed March 11th, 1871.

By virtue and in pursuance to an order of the Honorable the Second District Court of the Parish of Orleans, bearing date the second day of the present month and directing an Inventory of the Property belonging to the Estate of the late Henry Parish,
150 deceased to be taken by the undersigned Notary, which order was rendered on the petition of Daniel Parish of the City

and State of New York, Testamentary Executor of the said deceased, duly certified copies of which petition and order of Court are hereunto annexed for reference.

Be it known that on this Ninth day of the month of March, in the year of our Lord One Thousand Eight Hundred and Seventy-one.

I, Theodore Guyol, a Notary Public, duly commissioned and sworn for the Parish of Orleans, State of Louisiana, accompanied by George W. Babcock, of this City, acting as the Attorney-in-fact of the said Daniel Parish, executor aforesaid by virtue of the annexed letter of attorney, by Messrs. John L. Lewis and Horne Bayon, of this City, the experts duly appointed and sworn by the said Court, to appraise the property of the said Succession and by Messrs. Armand Guyol and Ambrose Lapice, of this City, competent witnesses, proceeded to take a true, faithful and correct Inventory of all the property belonging to the Succession of the said late Henry Parish, together with the valuation thereto affixed by the said Experts in the manner following, to-wit:—

Twelve several square- of ground situated in the rear of this City, and designated as follows, viz:

Square No. One Hundred and Forty-five, bounded by Fifth or Dupre, Fourth, or Guy-so, Thalia & Melpomene Streets; Square No. One Hundred and Forty-six, bounded by Fourth or Gayoso, Van Buren or Soledo, Thalia & Melpomene Streets; Square No. One Hundred and Forty seven, bounded by Van Buren or Saledo, Third or Lopez, Thalia & Melpomene Streets; Square No. One Hundred and Forty eight, bounded by Third or Lopez, Second or Rendon, Thalia & Melpomene Streets; Square No. One Hundred and Forty Nine, bounded by Second or Rendon, St. John, Thalia & Melpomene Streets; Square No. One Hundred and Fifty, bounded by Violet or Clark, St. John, Thalia & Melpomene Streets; Square No. One Hundred and Fifty three, bounded by Fifth or Dupre, Fourth or Gayoso, Melpomene and Terpsichore Streets; Square No. One
151 Hundred and Fifty four, bounded by Fourth or Gayoso, Van Buren or Soledo, Melpomene & Terpsichore Streets; Square No. One Hundred Fifty five bounded by Van Buren, or Soleeado, Third or Lopez, Melpomene and Terpsichore Streets; Square No. One Hundred and Fifty-sixth, bounded by Third or Lopez, Second or Rendon Melpomene and Terpsichore Streets; Square No. One Hundred and Fifty seven bounded by Second or Rendon, St. John, Melpomene and Terpsochore Streets; Square No. One Hundred and Fifty eight, bounded by St. John, Violet or Clark, Melpomene and Terpsichore Streets;

Which said square of ground, said appraisers have valued at the sum of Fifty Dollars each, making for the whole, the sum of Six Hundred Dollars, $600.00

And there being no other property, rights, credits or effects, in this Parish, belonging to the aforesaid Succession and to be included in this Inventory, I, the said Notary have closed the same and have hereunto subscribed my name, together with the said parties and

witnesses on the day and date aforesaid after having affixed hereto the required United States internal revenue stamps duly cancelled.

(Original Signed) GEO. W. BABCOCK.
JNO. L. LEWIS.
I. BAYON.
A. G. LA PICE.
ARMAND GUYOL.
THEO. GUYOL, *Not. Pub.*

A true copy of the original duly stamped.
(Signed) THEO. GUYOL, *Not. Pub.*

Petition Praying for Sale of Property.

Filed March 11th, 1871.

Second District Court.

Succession of HENRY PARISH.

To the Honorable the Judge of the Second District Court of the Parish of Orleans:

The petition of Daniel Parish Testamentary Executor of the deceased shows with respect:

152 That he caused an Inventory to be made, of all the property possessed by the deceased in this parish and which consists of squares and parts of squares of ground in this City; That the estate is without debts. That he is desirous of closing out *of* the affairs of the said Succession & of disposing of the property thereof.

He therefore prays that it may please your Honor to order a sale of the property fully set forth in the Inventory on file and made by T. A. Guyol, Esq., Notary Public, and which is as follows, viz:—

Square No. 145, bounded by 5th, or Dupre, 4th, or Gayoso, Thalia & Melpomene Streets. Square No. 146 bounded by 4th or Gayoso, Van Buren Solcedo Thalia & Melpomene Streets; Square No. 147, bounded by Van Buren, or Solcedo 3rd, or Lopez, Thalia & Melpomene Streets; Square No. 148, bounded by 3rd, or Lopez, 2nd, or Rendon Thalia & Melpomene Streets; Square No. 149 bounded by 2nd, or Rendon, St. John, Thalia & Melpomene Street-; Square No. 150, bounded by Violet or Clark, St. John Thalia & Melpomene Street- Square No. 153 bounded by 5th or Dupre, 4th, or Gayoso, Melpomene and Terpsichore Street-; Square No. 154 bounded by 4th, or Gayoso Van Buren or Solcedo, Melpomene and Terpsichore Street-, Square No. 155 bounded by Van Buren or Solcedo, 3rd, or Lopez, Melpomene and Terpsichore Streets; Square No. 156 bounded by 3rd, or Lopez, 2nd, or Rendon, Melpomene and Terpsichore Streets; Square No. 157 bounded by 2nd, or Rendon, St. John, Melpomene and Terpsichore Streets; Square No. 158 bounded by St. John, Violet or Clark, Melpomene & Terpsichore Streets.

That the sale be made by E. A. Deslonde, Auctioneer, according

to law and on the following terms and conditions, One Third Cash, balance on a credit, with interest at 8 per cent of one and two years, with mortgages &c., and Petitioner prays for such other and further orders as the nature of the case may require.

(Signed) W. H. HUNT &
W. O. DENEGRE,
Att'y.

Order.

Let the sale within prayed be made by E. A. Deslonde, Auctioneer on the terms and conditions within prayed for & according
153 to law.

New Orleans, March 11th, 1871.

(Signed) L. S. DUVIGNEAUD, *Judge.*

Petition & Order to Have Power of Attorney Filed.

Filed April 20th, 1871.

Second District Court.

Succession of HENRY PARISH.

To the Hon. the Judge of the Second District Court for the Parish of Orleans:

The petition of Daniel Parish, shows with respects.

That he herewith deposits in Court the power of attorney from him to Geo. W. Babcock of the City of New Orleans, and prays that the same may be duly filed.

(Signed) W. O. DENEGRE &
W. H. HUNT,
Att'ys for D. Parish.

Order.

Let the Power of Attorney within referred to be approved and homologated.

New Orleans, April 20th, 1871.

(Signed) L. S. DUVIGNEAUD, *Judge.*

Powers of Attorney.

Filed April 20th, 1871.

Know all men by these presents, That this day, before me, Edwin T. Curry, Junior, a commissioner of Deeds, duly appointed and qualified under the laws of the State of Louisiana, for the State of New York, dwelling and practicing in the said City. Per-
154 sonally came and appeared Daniel Parish of said City and State of New York, herein acting in his capacity of the testa-

mentary executor of the late Henry Parish late of the said City of New York, deceased.

Who declared that he had made and appointed and doth by these presents, make nominate, ordaine, authorize, constitute and appoint George W. Babcock of the City of New Orleans, and State of Louisiana, to be his true and lawful agent and attorney in fact, Special, giving and granting unto the said attorney full *and* authority to represent and act for him, said Constituent, in his aforesaid capacity of Testamentary Executor in all cases wherein the state of the said late Henry Parish shall or may be interested, to appear before all Courts of law and equity, then to do and prosecute or to answer or defend as occasion shall or may require; to sell all or any of the property belonging to the said estate and situated in the said State of Louisiana and to fulfill all formalities which may be required by the laws of this said State, to effect such sales, and to receive and receipt for the price or prices thereof; and generally to do and perform all and every other act, matter or thing that shall or may be requisite and necessary in the *in the* administration of the said estate and the sale and disposal of the same in the said State of Louisiana as fully and effectually to all intents and purposes as he, the said appearer might or could do, if personally present and acting in his aforesaid capacity.

Done and passed in the said City of New York, in the presence of Helen Parish and Daniel Parish, Junior, Competent witnesses who have signed these presents with the said appearer and me said commissioner on this Third day of March A. D. 1871.

(Signed) DANIEL PARISH, *Executor, &c.*
HENLE PARISH.
DANIEL PARISH, JUNIOR.
EDWIN F. CURRY, JUNIOR.
Commissioner for Louisiana in New York.

A true copy of the original duly stamped and annexed to the Inventory of the Estate of Henry Parish made before me on
155 the ninth day of March eighteen hundred and seventy one, also duly stamped.

New Orleans Nineteenth of April 1871.

(Signed) THEO. GUYOL.

Petition and Order of D. Parish the Recognized as Executor, etc.

Filed May 20th, 1871.

Second District Court.

No. 32065.

Succession of HENRY PARISH.

To the Hon. the Judge of the Second District Court for the Parish of Orleans:

The petition of Daniel Parish, of the City of New York, shows with respect.

That he has heretofore deposited in this Hon. Court an exemplified copy of the will of the deceased which has been duly admitted to probate in the Surrogate's Court in and for the County of New York.

Petitioner prays to be recognized as executor under the said will that letters testamentary issue to him on his giving security according to law and that George W. Babcock be recognized as his agent and attorney in fact and petitioner prays for such other and further orders and decree as the nature of the case may require.

(Signed) W. O. DENEGRE &
W. H. HUNT, *Att'ys.*

Order.

Let the petitioner Daniel Parish be recognized as Testamentary Executor of the Last Will and Testament of the late Henry Parish, and let Letters Testamentary issue to him on his giving bond & surety in the sum of Fifteen Hundred Dollars, and let George W. Babcock, Esq., be recognized as the agent and Attorney in fact of the said Executor.

New Orleans May 20th, 1871.

(Signed) J. S. DUVIGNEAUD, *Judge.*

156

Certificate.

Civil District Court for the Parish of Orleans.

STATE OF LOUISIANA:

I, L. W. Gunther, D'y Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing One hundred & forty two (142) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Mrs. Annie E. Brewer is plaintiff and Yazoo & Miss. Valley R. R. Co. is defendant, instituted in this Court and now in the records thereof under the No. 87850 of the Docket thereof Division "A" the Honorable T. C. W. Ellis, Judge.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this First day of August in the year of our Lord, one thousand nine hundred and ten and in the one hundred and thirty fifth year of the Independence of the United States of America.

[SEAL.] (Signed) L. W. GUNTHER, *D'y Clerk.*

157 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Transcript of Appeal Filed.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO AND MISSISSIPPI VALLEY RAIL ROAD COMPANY.

Appeal from the Civil District Court, Parish of Orleans, Division "A."

T. C. W. Ellis, Judge.

Filed August 1st, 1910.

(Signed) PAUL E. MORTIMER, *Clerk.*

Called and Continued with Preference.

(Extract from Minutes.)

NEW ORLEANS, *Saturday, October 22nd,* 1910.

The Court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent, Francis T. Nicholls, Associate Justice.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPI VALLEY R. R. Co.

This case was ordered by the court to be continued with preference.

Motion and Order to Enter Name of Leverich as Counsel.

NEW ORLEANS, *Tuesday, January 3rd,* 1911.

The Court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent, Francis T. Nicholls, Associate Justice.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY R. R. Co.

158 On motion of Watts L. Leverich, attorney at law, and on suggesting to the court that he has been employed by Mr. Geo. B. Leverich, one of the defendants in warranty, to represent him in these proceedings,

It is ordered by the Court that Watts K. Leverich be and he is hereby made attorney of record herein.

Case Called and Continued with Preference.

(Extract from Minutes.)

NEW ORLEANS, *Saturday, January 7th*, 1911.

The court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent, Francis T. Nicholls, Associate Justice.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD Co.

This case was ordered by the Court to be continued, not having been reached.

Case Called and Continued with Preference.

(Extract from Minutes.)

NEW ORLEANS, *Friday, February 3rd*, 1911.

The court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent, Francis T. Nicholls, Associate Justice.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD Co.

This case was ordered by the court to be continued with preference.

Case Called, Argued, and Submitted.

(Extract from Minutes.)

NEW ORLEANS, *Saturday, March 4th*, 1911.

The court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent, Francis T. Nicholls, Associate Justice.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY R. R. CO.

This cause came on this day to be heard and was argued by counsel. Mr. M. M. Lemann opened for the plaintiff, appellee; Mr. A. A. Moreno replied for the defendant, appellant; Mr. Benjamin Ory pleaded for J. M. & Etienne Gele and William Leferriere, defendants, called in warranty, and was followed by Mr. W. Winn Wright, for the Babcocks, warrantors, appellants; and Mr. Lemann closed the argument. The court then took the cause under advisement upon the briefs and papers now on file.

Plea of Prescription.

Supreme Court of Louisiana.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.

Now into this Honorable Court through their undersigned Counsel, come Etienne Gele, William Leferriere and Widow and
159 Heirs of the Late J. M. Gele, Defendants called in warranty herein, and in bar of the suit and claim of Plaintiff asserted herein, pleads the prescription of Two years under the bankrupt law of March, 1867, now contained in the Revised Statutes of the United States, Section 5057, which provides:

"No suit, either at law or in equity, shall be maintainable, in any Court between and assignee in bankruptcy and a person claiming an adverse interest, touching any property or right of property transferable to, or vested in, such assignee, unless brought within Two years from the time when the cause of action accrued for or against such Assignee. And this Provision shall not, in any case, revive a right of action barred at the time an Assignee is appointed."

Wherefore, defendants in Warranty pray, that this peremptory

exception and plea of prescription be maintained, and that Plaintiff's suit be dismissed at her costs.

(Signed) BENJAMIN ORY,
Att'y for Etienne Gele, Wm. Laferriere, and the Widow and Heirs of J. M. Gele.

(Endorsed:) No. 18431. Supreme Court of Louisiana. Mrs. Annie E. Brewer vs. Yazoo and Mississippi Valley Rail Road Company. Plea of Prescription on behalf of Defendants. Presented and Filed in open Court, March 4th, 1911. (Signed) John A. Klotz, Dep. Clerk.

Judgment.

(Extract from Minutes.)

NEW ORLEANS, *Monday, March 27th*, 1911.

The Court was duly opened, pursuant to adjournment. Present, their Honors Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion
160 and *and* Judgment of the Court in the following case.

No. 18431.

Mrs. ANNIE E. BREWER
vs.
YAZOO AND MISSISSIPPI VALLEY RAIL ROAD COMPANY.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be amended in so far as to reject, finally, the claim set up by plaintiff for damages, as also, the like claims, set up by the other litigants, against their respective warrantors. It is further decreed that, as thus amended, said judgment be affirmed; the costs of the appeal to be paid by the plaintiff.

Opinion.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, *Monday, March 27th*, 1911.

The court was duly opened, pursuant to adjournment.

Present, their Honors Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter D. Sommerville, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion and judgment of the court in the following case:

161 Mr. Justice Monroe.

No. 18431.

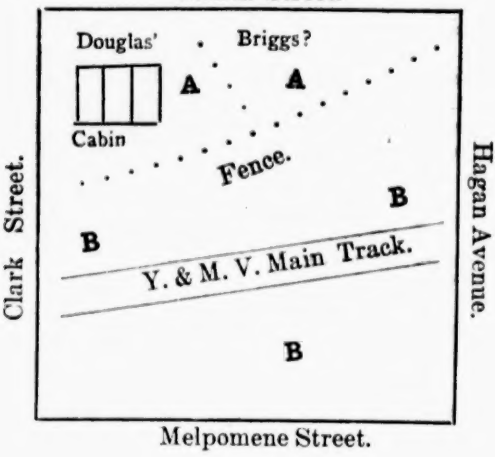
Mrs. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY R. R. CO.

Appeal from the Civil District Court, Parish of Orleans, Ellis, Judge.

Statement of the Case.

Plaintiff prays to be decreed the owner (subject to a servitude, in favor of defendant, of a right of way, not to exceed fifteen feet in width) of a certain portion of the square of ground, No. 150, in this City, bounded by Hagan Avenue, Violet (or Clark), Melpomene and Thalia streets, all, as described in her petition (and supplemental petition) and as, approximately, represented on the subjoined sketch, the portion in question being represented by the letters B, B, B, and bounded by Hagan Avenue, Melpomene and Clark streets and the "Fence," the latter, perhaps, (differently from the dotted line, as on the sketch) having one of its termini on the Thalia street, rather than on the Hagan Avenue, line, thus, extending the boundary of the property around the corner of the avenue and for some little distance on the street.

MONDAY, *March 27th*, 1911.



162 Plaintiff and defendant (and the warrantors who have been called in) claim under a common author, Henry Parish, who, some time prior to 1842, had, apparently, retired from the firm of Gasquet, Parish & Co., of this City, leaving his partners to liquidate the business; and, probably, as part of the liquidation, they, in 1848, brought suit against Madame Curell for the partition of a tract of land which she and the members of firm held in indivision and which included, or was supposed to include, the square No. 150, here in question, and there was a judicial partition, the result of which was, that, on Nov. 4, 1848, Henry Parish was decreed to be the owner of square No. 150 and certain other squares. In the meanwhile, in 1842, Parish had made a will whereby he disposed of his real estate in Louisiana as follows:

"Sixth. I give, devise and bequeath unto my friend, Peter Conrey, of New Orleans, my part, or share, or interest in the undivided "real estate situated in Louisiana belonging to my late firm of "Gasquet, Parish & Co., in trust, to convey the same, or pay over the "proceeds thereof, to my namesake, Henry Parish Conrey, son of "the said Peter Conrey; a part of which undivided real estate is sit-"uated in Jefferson parish in the said State of Louisiana, and the "balance (about 3,500 acres of land) in said State; it being my wish "that the liquidating partners of my said late firm should be allowed "if they should think best, to sell said undivided real estate and "pay the proceeds over to the said Peter Conrey; and, in case the "said real estate should be divided, it is my wish that the portion al-"lotted, or set apart, to me shall be conveyed to my said namesake; "my de-ire being, not, by this devise, or bequest, to embarrass my "late partners in the liquidation or settlement of the estate of my "said late firm."

Thereafter, the testator died, in New York, where he had lived, and, on Dec. 17, 1857, his will was, there, admitted to probate. Sometime prior to December, 1859, Henry Parish Conrey died; his succession was opened, in the Second District Court of this
163 parish; an inventory was taken, in which the property here in question was included, as belonging to said succession; and, on June 9, 1860, James Grimshaw, as administrator, executed a notarial act of sale, conveying said property, with other squares, to George Brewer, pursuant, as the act recited, to an adjudication, previously made by order of court, at public auction; said act containing the further recital:

"Which portions of ground belong to the said late Henry Parish "Conrey, for having inherited the same from Henry Parish, agree-"ably to his testament, dated the twentieth of September, 1842, duly "probated in the Surrogate's Court, of the State and County of New "York," etc.

George Brewer was adjudged a bankrupt on Dec. 28, 1875; and, on Jan. 15, 1876, all of his estate, real and personal, was conveyed, by the Register, to Charles H. Reed, assignee, who, on November 23, 1876, in confirmation of a sale which had previously been made, by order of court, at public auction, executed a notarial act, conveying said property to the plaintiff herein, who was the wife of the bankrupt, separate in property by marriage contract.

In the meanwhile; that is to say, on April 11, 1868, Daniel Parish, appearing as a resident of the state of New York, presented a petition to the Second District Court, alleging that the will of Henry Parish had been admitted to probate in that state; that he had, there, qualified as one of the executors; presenting an exemplified copy of the will and of the proceedings for probate of the same; and, praying that said will be registered and executed; and an order to that effect was made. Thereafter, on March 21, 1871, at the instance of the same petitioner, an inventory was made, which included the square No. 150, here in dispute, as belonging to the succession of Henry Parish; and, later still, the petitioner applied for an order for the ale of the property so inventoried, alleging in his petition: "That "the estate is without debts; that he is desirous of closing out the "affairs of the said succession and of disposing of the prop-
164 "erty thereof." And the order was made, and was followed by a sale of the property, on April 25, 1871 (as we infer, from the recital in another instrument, though the act of sale is not in the record), to H. C. Boucher; after which, to-wit: on May 20, 1871, Daniel Parish presented a petition to said Second District Court asking that he be recognized as executor of Henry Parish and that letters issue to him, as such, and an order to that effect was, then, made.

H. C. Boucher, on January 15, 1872, sold the property to George W. Babcock; and the widow and heirs of Babcock, on September 8, 1893, sold it to Benjamin Recurt; who, on March 31, 1897, sold it to William Laferriere, Etienne Gelé and Jean Marie Gelé; who, on November 22, 1898, sold to the present defendant a portion of said square No. 150, described as follows (the description being taken from the record in the conveyance office):

"Commencing, corner Hagan Avenue and Melpomene street, por-"tion measures 233' 9" front on Hagan Avenue, up to the corner of "Thalia street; thence, a depth, along side of Thalia street, of 35', "running towards Clark street; thence, on a line having a curve of "4 degrees and running towards Clark street, and reaching to Clark "street at a point on said Clark street 83' 6" distant from the corner "of Clark and Melpomene streets; thence, along said Clark street a "distance of 83' 6" up to the corner of Melpomene street, and, "thence, a depth and front on Melpomene street of 227' 7", up to "the point of beginning, at the corner of Melpomene street and "Hagan avenue."

The defendant, Railroad Company, had laid its track, as represented on the sketch, in 1882 or 1884, without any pretense of a title to the land, or any part of it, and, some years later, it had put up the fence, probably, as a measure of precaution. Briggs, an old negro lived, as a squatter, in what the witnesses call "an old shack," somewhere in the neighborhood of the spot where the name appears, prior to the sale to Recurt, and does not appear to have attorned to anyone. He is said to have been put off by Laferriere and
165 the Gelés. Douglas, another negro, testified that he built his house (which is also called a "shack") in October, 1896, and that he rented from Gelé; but Laferriere and the Gelés did not make their purchase until March 31, 1897, and do not pretend to have had anything to do with the property prior to that time, and the nearest

that Douglas could, or did, come to fixing a date at which he began to pay rent was by the production of certain rent receipts, which are referred to in his cross examination as being dated January 1, May 1, July 1 and October 1, 1909. He said that he had others and could, and would, produce them, but he did not produce them, and no witness for defendant or the warrantors was called to show that he had ever made any payment prior to that evidenced by the earliest of the receipts above mentioned; nor, did any witness, in any other way, fix the date at which he began to attorn for his holding.

The Railroad Company, by way of defense, sets up the title acquired by it from Laferriere and the Gelés, on November 22, 1898; alleges that it had laid its track in 1882 and had been in possession from that date; that it, and its vendors, *has* been in possession openly, peacefully, without disturbance, and under title translative of property, for more than ten years. It also pleads the prescription of two years, under act 277, of 1902. It further alleges that it has established a servitude for its road bed, occupying a strip of land 50 feet wide, and that, even if plaintiff should be decreed to be the owner of the land, it can not be evicted, but that she (plaintiff) should be relegated to a suit for the value of the land. And, it concludes by calling its vendors in warranty.

William Laferriere and Etienne Gelé, and the widow and heirs of Jean Marie Gelé, set up a title, acquired, as they allege, in good faith, and possession thereunder since March 31, 1897; and they set up title, and possession, in good faith, in their authors, and plead the prescription of five, ten and thirty years. They deny that plaintiff, or *his* authors, including Henry Parish Conrey ever had any title, and allege that the bequest in the will of Henry Parish,
166 under which they claim, was a prohibited substitution. And they call their vendor, Recurt, in warranty.

The answer of Recurt is much the same, and he calls his vendors in warranty; and they, after pleading prescription and some other matters, by way of exception, interpose a general denial. In this Court, Laferriere and the Gelés have filed a plea of prescription of two years, under the bankrupt law of 1867, now incorporated in the Revised Statutes of the United States as Section 5057. There was judgment in the district court in favor of plaintiff for the land claimed, "subject to a servitude, in favor of defendant, Railroad Com-" pany, of passage and for railroad purposes, generally, extending " twenty five feet on each side of the centre of defendant's track, now " traversing said square," and for costs; the claim for damages being dismissed, as in case of non suit; and there was judgment in favor of defendant and against its warrantors, and in favor of those called in against those whom they called, for costs, all other claims being dismissed as in case of non suit; and all those so cast have appealed.

Opinion.

The objection, that plaintiff's title is based upon a prohibited substitution, is not well founded. The intention of the testator, and the effect of the bequest, *was* to vest the ownership of the property bequeathed in the legatee, and the condition, that the property should

C. C. 3486; Laidlaw vs. Landry, 12 A., 181; Gasquet vs. Directors, etc., 45 A., 344. Moreover, both Briggs and Douglas went upon the land as squatters and trespassers, and possessed only what they squatted on. Briggs was driven off, and Douglas is shown to have paid rent from January 1, 1909, for his holding, but the extent of his holding was not enlarged, either actually or constructively, whether for his own benefit or for the benefit of those who had acquired the title after he had thus, as a trespasser, possessed
170 himself of it. Chapman vs. Morris, etc., Ass'n, 107 La., 283.

It is said that this action is barred by the prescription of thirty years, because neither Henry Parish Conrey nor those who derived title through him demanded delivery of the property, within that time, from the executors of Henry Parish. But the administrator of Conrey took possession of the property within, say, three years after the death of Henry Parish and caused it to be sold, under order of court, as belonging to Conrey's succession, and Brewer, the purchaser, acquired the constructive possession, following his title, and retained it, so far as this record shows, without interference of any kind until defendant laid its track, in 1882, all of which we think, served as an effectual interruption of the prescription invoked, notwithstanding that the will of Henry Parish, though exhibited as a muniment of title to the notary before whom the act of sale to Brewer was executed, had not been probated in this state, and notwithstanding that no demand is shown to have been made on the executors.

On the other hand, the prescription of 30 years, acquirendi causa, must be founded on continuous, uninterrupted, public, unequivocal, possession, under title, or claim of title, though the possessor need not be in good faith (C. C. 3500, 3503), and defendant and warrantors have shown no such possession.

The prescription of five years, against informalities, "connected with, or growing out of" public sales, is also pleaded, by way of defense; but that prescription is inapplicable to radical nullities such as those which affected the sale made at the instance of Daniel Parish.

Counsel for the warrantors further plead a prescription established by the Revised Statutes of the United States, to-wit:

"SECTION 5057. No suit, either at law or in equity, shall be main-
"tained in any court, between the assignee in bankruptcy and a
"person claiming an adverse interest, touching any property, or
"right of property, transferable to, or vested in, such assignee, un-
"less brought within two years from the time when such cause of
"action accrued for, or against, such assignee. And this pro-
171 "vision shall not, in any case, revive a right of action barred
"at the time when an assignee is appointed."

The provision of law thus invoked applies, in terms, to causes of action which have accrued "for, or against, such assignee," but, not to causes of action which arise, between persons who purchase property from an assignee and other persons, long after such purchases and long after the assignee has become functus officio, and it does

not apply to this case, because, in January 1876, when Reed was appointed assignee in bankruptcy of Brewer, the cause of action here sued on did not exist, since, neither the defendant nor any of its authors pretended, at that time, to be in possession of the land here claimed or had ever done anything to interfere with the constructive possession, following the authentic act by which Brewer acquired his title. The distinction between cases where a right of action has accrued for, or against, an assignee (to which the statute applies) and those where the right of action has not accrued (to which the statute does not apply) is made in Bowers vs. Delaware etc. R. Co., 153 N. Y., 476, and in Dushane vs. Beall, 161 U. S. 513, (Law Ed. 791).

Plaintiff makes no complaint of the judgment appealed from, in so far as it recognizes a right of servitude in defendant; but the warrantors, among their other objections, say that the judgment is erroneous, in that it dismisses plaintiff's claim for damages, as in case of non suit, instead of rejecting it as barred by the prescription of ten years; and the objection appears to us to be good.

McCutcheon vs. Texas & P. Ry. Co., 118 La., 139.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be amended in so far as to reject, finally, the claim set up by plaintiff for damages, as also, the like claims, set up by the other litigants, against their respective warrantors. It is further decreed that, as thus amended, said judgment be affirmed; the costs of the appeal to be paid by the plaintiff.

172 *Petition for Rehearing.*

Supreme Court of Louisiana.

No. 18431.

MRS. ANNIE E. BREWER
vs.
YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Etienne Gele; William Laferriere; Mrs. Caroline Gele, Widow of Jean Marie Gele; Mrs. Catherine Gele, Wife of Gaspar Pietri; and Gaspar Pietri, her husband to authorize her; Mrs. Leontine Gele, wife of John G. Fahrman, and John G. Fahrman, her husband to authorize her; Mrs. Theresa L. Gele, wife of Robert H. Smith and said Robert H. Smith, her husband to authorize her, of John G. Gele, all called in warranty and made Defendants herein by the Yazoo and Mississippi Valley Railroad Co., Defendants and Appellants, respectfully represents that the opinion and Decree rendered in this case on the 27th day of March, 1911, is erroneous and contrary to the Law and evidence and prejudicial to the interest of

Petitioners and that a rehearing should be granted in this matter for the following reasons, to-wit:

1st. The Court erred in holding that Plaintiff, Mrs. Annie E. Brewer or her Author- George Brewer, held title to the property sued for herein under Henry Parish, there being no evidence whatsoever in the record to sustain such view, and on the contrary evidence in Plaintiff's title, that her Author-, George Brewer, held title under Henry Parish Conery, the latter's title averring that Henry Parish had acquired the property in 1848 only, though the Will was made in 1842, long before his acquisition in 1848 as recited in the
173 Sale.

2nd. On the ground that the Court erred that Henry Parish was the owner in 1842—the date of the Will—when George Brewer's title recites that Henry Parish became Owner in 1848.

3rd. The Court erred in holding that the Testament made in 1842 could and did convey to Henry Parish Conery, property only acquired in 1848, this being at variance with Article 1720 of the Civil Code which provides that:

"A disposition couched in terms present and past, does not extend to that which comes afterwards."

And also at variance with Article 1722 of the Civil Code, which provides that:

"A disposition, the terms of which express no time, neither past nor future refers to the time of making the Will."

4th. That the Court erred in awarding the whole of the property sued for to Plaintiff, Mrs. Annie E. Brewer, the latter claiming under a Will of Henry Parish, bequeathing only—"all his part or share of, or interest in the undivided real estate, situated in the State of Louisiana, belonging to my said late firm of Gasquet, Parish & Co.;" there being no evidence whatsoever before the Court, that said Firm ever was the Owner of the property involved in this suit.

5th. That the Court erred in deciding that Plaintiff had even constructive possession of the property sued for, she having acquired from the Assignee in Bankruptcy "Only such title as was in him vested by the Assignment in Bankruptcy and the property being sold subject to all encumbrance then existing" (Transcript, page 51).

6th. That the Court erred in holding that Defendants, Etienne Gele et al.'s did not have physical possession of the property sued for over Ten years before the bringing of this suit, there being ample Testimony showing physical possession through Tenants pay-
174 ing rent for part of the Square, as far back as 1896 (See Transcript, page 62, Testimony of Scott Douglas, and testimony of Benjamin Ory, Transcript, page 79).

7th. On the ground that the Court erred in holding: "The prescription of Two years established by the Revised Statutes of the United States No. 5057 and the Bankrupt Law of 1867, applies in terms to causes of action, for, or against an Assignee in Bankruptcy; it does not apply to causes of action which arise between persons who purchase property from the Assignee and others, long after the purchase, and long after the Assignee has become functus Officio"—it being in evidence that there was of Record in the Conveyance

Office of this Parish in 1872, in Conveyance Book 102 Folio 68, the Sale of the property involved in this suit by Henry Charles Boucher to George W. Babcock. (Transcript page 91) thus creating a public adverse interest in the property, claimed adversely to the assignee in Bankruptcy at the time of his appointment, and for more that Two years previously thereto; said Assignee having been appointed as such, and the property of the Bankrupt assigned to him January 15th, 1876, by the Bankrupt Court (Transcript page- 44 and 45) and the Assignee having sold the same to Mrs. George Brewer, June 17th, 1876 (Transcript page 50). This ruling of the Court on that Particular point being absolutely at variance with the Jurisprudence of the United States Supreme Court, and particularly at variance with the cases of Gifford vs. Helmes, 98 U. S. 248—Wisner vs. Brown, 122 U. S. 215—Green vs. Taylor, 132 U. S. 415—Dushane vs. Beall, 161 U. S. 513—Rock vs. Dennett, 30 North Eastern Reporter (N. Y.) 171—and Gage vs. De Puy, 19 North Eastern Reporter (Ill.) page 878.—And such Ruling being a denial to Defendants of the immunity from suit after Two Years from the Recording of their Deed (1872) either at Law or in equity provided by Sec. 2 of the Bankrupt Law of the United States, approved
175 March 2nd, 1867, now Incorporated into Sec. 5057 of the Revised Statutes of the United States, pleaded by Petitioners in this Court, in defence of their Recorded title.

Whrefore, the premises considered, petitioners pray that after due consideration a Rehearing be granted in this case and that the Judgment of the District Court be reversed, and that there be Judgment for Defendants and Appellants; but should the Court refuse to grant a rehearing, then these Defendants and Appellants pray that this case be remanded to the Lower Court for a further hearing herein to show the full and physical possession of Defendants and Appellants and show that the Firm of Gasquet, Parish & Co. never were the Owners of the property sued for herein; and Petitioners further pray for a delay of Five days wherein to file Briefs in support of this Application, and they pray for all general and equitable relief.

(Signed) BENJAMIN ORY,
Atorney for Petitioners and Appellants.

(Endorsed:) No. 18,431. Supreme Court of Louisiana. Mrs. Annie E. Brewer versus Yazoo and Miss. Valley Rail Road Co. Petition for Rehearing &c. Filed April 7th, 1911. (Signed) John A. Klotz, Dep. Clerk.

Petition for Rehearing.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,

Supreme Court of Louisiana.

No. 18431.

MRS. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

Petition of the Yazoo & Mississippi Valley Railroad Company, Defendant and Appellee, for a Rehearing.

176 To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the Yazoo & Mississippi Valley Railroad Company, defendant and Appellee in the above numbered and entitled cause, with due respect, represents:

That it is aggrieved and injured by the judgment rendered in this cause and prays for a rehearing herein on the question of its right to claim damages from its warrantor.

The judgment of the lower Court reserved to your petitioner its right to proceed against its warrantor for any eviction suffered by it, and this Honorable Court amended that part of the judgment so as to finally reject your petitioner's claim for damages against its warrantor for being evicted by the plaintiff herein. Article 2506 of the Civil Code says:

"Buyer's rights on eviction, when warranty exists, when there is a promise of warranty, or when no stipulation was made on that subject, if the buyer be evicted, he has a right to claim against the seller:

1. The restitution of the price.

2. That of the fruits or revenues, when he is obliged to return them to the owner who evicts him.

3. All the costs occasioned, either by the suit in warranty on the part of the buyer, or by that brought by the original plaintiff.

4. The damages, when he has suffered any, besides the price that he has paid."

Your petitioner believes that under the Article of the Code, just cited, that it has a cause of action against its warrantor for the recovery of the damages suffered by it. The trial Court was also of this opinion and reserved to your petitioner the right to proceed against its warrantor for the damages provided by Article 2506 C. C.

177 Your petitioner purchased the land in controversy from Messrs. Etiennie Gele, Jean Marie Gele and William Lafferiere, by an act before William H. Wright, Notary Public, on November 22nd, 1898. Subsequently the acts of Mr. Wright were burnt, and your petitioner was compelled to rely upon

a copy of the inscription in the Conveyance Office to prove its purchase from its warrantors. This inscription did not give the purchase price, and at that time petitioner had no proper evidence upon which to base a judgment against its warrantors, but believes that this Honorable Court should reserve to it the right to proceed against its warrantors should the proper evidence be discovered. The judgment of this Honorable Court is a clear and total eviction of your petitioner from the land purchased from its warrantors, and any rights which your petitioner has obtained under this judgment are rights of servitude derived from Mrs. Annie E. Brewer, the plaintiff herein, by means of the prescriptions causa acquierendi, and arise in no manner from the Geles and Lafferriere, as this Honorable Court has decided that they had no title to the land sold your petitioner, and therefore, they could give your petitioner no rights to this land. Under the textual provision of the Civil Code therefore petitioner has the unquestioned right to recover of its vendors at least the amount paid them for the land. On what theory is warrantors entitled to return the money paid them by petitioner for the land, when your Honors' decision evicts petitioner from the land purchased?

This Honorable Court gave no reasons for denying your petitioner the right to proceed under Article 2506 C. C., and petitioner believes that it might have been a matter of inadvertence on the part of this Honorable Court that your petitioner's claim for damages against its warrantor should have been finally rejected.

Believing that under the law your petitioner has a right to
178 the damages provided by the Article, cited supra, and with all due and proper respect, your petitioner believes that it is entitled to a rehearing in this matter, and which rehearing is now most respectfully prayed for.

(Signed) GUSTAVE LEMLE,
(Signed) ARTHUR A. MORENO,
Attorneys.

(Endorsed:) No. 18431. Supreme Court of La. Mrs. Annie E. Brewer versus Yazoo & Mississippi Valley Railroad Company. Petition for Rehearing. Filed April 7, 1911. (Signed) John A. Klotz, Deputy Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, *Monday, April 24th*, 1911.

The Court was duly opened, pursuant to adjournment. Present their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

By the COURT:

No. 18431.

MRS. ANNIE E. BREWER
vs.
YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY.

It is ordered that the Rehearings applied for in this case be Refused.

Petition for Writ of Error and Assignment of Errors.

Supreme Court of Louisiana.

No. 18431.

Mrs. ANNIE E. BREWER
versus
YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.

179 To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Etienne Gele, William Laferriere, Mrs. Caroline Diefenbach, Widow of Jean Marie Gele; Mrs. Catherine Gele, wife of Gaspar Pietri, and Gaspar Pietri, her husband, to authorize her Mrs. Leontine Gele, wife of John G. Fahrman, and John G. Fahrman, her husband, to authorize her; Mrs. Teresa L. Gele, wife of Robert H. Smith, and Robert H. Smith, her husband, to authorize her, and John G. Gele, made Defendants in warranty in this cause, and assign the following errors in the Judgment and decree of the Supreme Court of the State of Louisiana, rendered in this cause March 27th 1911, which Judgment was made final by the decision handed down April 24th 1911, refusing a rehearing; and make this assignment part of the Writ of error to the Supreme Court of the United States, applied for by said Defendants to-wit:

1st. That the Court in refusing to sustain in favor of the Defendants the prescription of Two Years provided by the bankrupt Law of 1867, now incorporated in the Revised Statutes of the United States Sec. 5057, which reads:

"No suit, either at law or in equity, shall be maintainable, in any Court, between an assignee in Bankruptcy and a person claiming an adverse interest, touching any property or right of property transferable to, or vested in such assignee, unless brought within Two years from the time when the cause of action accrued for or against such Assignee.

"And such Provision shall not, in any case, revive a right of action barred at the time when an assignee is appointed."

2nd. That the Court erred in holding that the Provisions of the Bankrupt Act of 1867, now U. S. Revised Statutes Sec. 5057, did not apply against a transferee of the Assignee in bankruptcy, thereby

depriving the defendants, the Applicants herein of the pro-
180 tection or immunity from suit, granted to them, under the Provisions of the above mentioned bankrupt law of the United States and depriving them of the protection and immunity from suit guaranteed to them under the provisions of Sec. 5057 of the Revised statutes of the United States.

3rd. That the Court erred in holding that Defendants' cause of action and that of their Warrantors against the original Plaintiff, Mrs. Annie E. Brewer, accrued after the Assignee in Bankruptcy of the Bankrupt, George Brewer, had become functus officio; it being in evidence that the adverse rights claimed herein against Mrs. Annie E. Brewer, sprung in existence and commenced as soon as H. C. Boucher purchased the property involved herein from Henry Parish or his Succession, in April 1871, and caused his act of sale to be placed of Record in the Conveyance Office of this Parish, in Book 98 Fo. 595, or at all events as soon as Henry C. Boucher, one of Defendants' Authors sold to George W. Babcock, on January 15th, 1872, and caused his adverse title to be Recorded in Conveyance Book 102, Folio 68, on January 17, 1872; and it being further in evidence that George Brewer was adjudged a Bankrupt in December 1875; that Charles H. Reed, his Assignee in Bankruptcy became vested with the rights of the bankrupt under the Decree of assignment dated January 15th, 1876; and that Mrs. Brewer original plaintiff, now Defendant in Application for Writ, purchased in November 1876, from the Assignee such title as was vested in him in and to the property involved herein.

4th. That the Court erred in holding that Mrs. Annie E. Brewer, the original Plaintiff herein had or could have more rights of exemption from suit than the Assignee had vested in him, it being the uniform jurisprudence of the United States Courts:

(*a*) "That the rights of the grantee of the assignee are barred by Sec. 5057 U. S. R. S. whenever the rights of the Assignee
181 (in Bankruptcy) would be barred." (Gifford vs. Helms, 98 U. S. 248.)

(*b*) "That the bar of the Statute runs as well against the assignee as against his transferee: The purchaser taking the right subject to the running of the Statute and subject to the fact that a part of the Two years has already run against the claim or right." (Green vs. Taylor, 132 U. S. 442.)

5th. That the Court erred in not sustaining the plea of prescription of Two Years against Mrs. Annie E. Brewer, the right of recovery vested at one time in the bankrupt or the Assignee being already prescribed against the latter at the time of his transfer to her, that is, more than two years having elapsed from the recording of the adverse title of H. C. Boucher, January 17th, 1872 to the date of the transfer by the Assignee Reed to Mrs. Brewer, November 23, 1876, and the effect of such prescription being to bar forever the right of action of both the Assignee in bankruptcy and his transferee Mrs. Brewer; this ruling being made in the cases of Gifford vs. Helm 98 U. S. page 248, and Green vs. Taylor, 132 U. S. page 442.

Wherefore, Defendants pray for the Judgment of the Supreme

Court of the United States on these assignments, and on due hearing that the Judgment of the Supreme Court of the State of Louisiana may be annulled and reversed with costs, and the Judgment of the Civil District Court for the Parish of Orleans rendered in this cause against these Defendants, be dismissed with costs. And these Defendants will so ever pray.

(Signed) BENJAMIN ORY,
Counsel for Defendants Above Named and Plaintiffs in Error.

Order Granting Writ of Error.

Allowed without supersedeas upon Applicants giving Bond for the sum of Fifteen hundred dollars.

182 Given officially this 24th day of June, 1911.

(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 18431. Supreme Court of Louisiana. Mrs. Annie Brewer vs. Yazoo & Miss. Valley Rail Road Company. Petition for writ of error and Assignment of Errors. Filed June 24, 1911. (Signed) Paul E. Mortimer, Clerk.

183 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mrs. Annie E. Brewer, Plaintiff and the Yazoo and Mississippi Valley Railroad Company, Defendants, and Etienne Gele; William Laferriere; Mrs. Widow Caroline Gele; Mrs. Catherine Pietri; Mrs. Leontine Fahrman; Mrs. Teresa L. Smith and their respective husbands, and John G. Gele, Defendants called in warranty by the said Yazoo and Mississippi Valley Railroad Company wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed

under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Yazoo and Mississippi Valley Railroad Company, and to the said Etienne Gele; William Laferiere; Mrs. Caroline Gele, Widow of Jean Marie Gele; Mrs. Catherine Gele, wife of Gasper Pietri,
184 by her husband duly authorized; Mrs. Leontine Gele, wife of John G. Fahrman, by her husband duly authorized; Mrs. Teresa L. Gele, wife of Robert H. Smith, by her husband duly authorized and John G. Gele Defendants called in Warranty by the said Railroad Company as by their complaint appears. We being willing that error, *of* any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White Chief Justice of the said Supreme Court, the 29th day of June, in the year of our Lord one thousand nine hundred and eleven.

(Signed) H. J. CARTER.

[SEAL.] *Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by

(Signed) JOS. A. BREAUX.

Chief Justice.

(Endorsed:) Supreme Court of Louisiana. No. 18431. Mrs. Annie E. Brewer versus (*Writ of Error*) Yazoo and Mississippi Valley Rail Road Co. Copy of a Writ of Error lodged in the Clerk's Office of the Supreme Court of Louisiana, in pursuance of
185 the statute in such cases made and provided, this 29th. day of June, one thousand nine hundred and eleven. (Signed) Benjamin Ory, Attorney *of* Plaintiff in Error. Filed June 29th. 1911. (Signed) Paul E. Mortimer, Clerk.

Bond for Writ of Error.

Know all men by these presents, That we Etienne Gele, John G. G. Gele, William Laferriere, Widow Caroline Gele; Mrs. Catherine Pietri & husband Mrs. Leontine Fahrman & husband, & Mrs. Teresa L. Smith & husband, as principal, and Gaspar Pietri, of New Orleans, as Surety are held and firmly bound unto Mrs. Annie E. Brewer in the full and just sum of fifteen hundred dollars to be paid to the said Mrs. Annie E. Brewer, certain Attorneys—certain attorney, executors, administrators or assigns, to which payment, well and

truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this Twenty-fourth day of June, in the year of our Lord, one thousand nine hundred & eleven.

Whereas, lately at a Session of the Supreme Court of Louisiana holding sessions in New Orleans, Parish of Orleans, Louisiana, in a suit depending in said Court, between Mrs. Annie E. Brewer and the Yazoo & Mississippi Valley Railroad Company et als., a judgment was rendered against the said Yazoo & Mississippi — Railroad Company and against the above named Principals, as Defendants called in warranty; and the said Defendants above named having obtained a Writ of Error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Mrs. Annie E. Brewer citing and admonishing her to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., within 30 days from
186 the date thereof.

Now, the condition of the above obligation is such, That if the said Etienne Gele, John G. Gele, William Laferriere, Mrs. Widow Caroline Gele; Mrs. Catherine Pietri & husband; Mrs. Leontine Fahrman & husband, and Mrs. Teresa L. Smith & husband shall prosecute this writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sixteen words interlined, approved Twenty four printed words, erased, approved.)

(Signed) ETIENNE GELE,
By BENJ. ORY, *His Attorney.* [SEAL.]
(Signed) JNO. G. GELE,
By BENJ. ORY, *His Attorney.* [SEAL.]
(Signed) WILLIAM LAFERRIERE,
By BENJ. ORY, *His Attorney.* [SEAL.]
(Signed) WIDOW CAROLINE GELE,
By BENJAMIN ORY,
Her Att'y. [SEAL.]
(Signed) MRS. CATHERINE PETRIE &
Husband, G. PETRIE,
By BENJAMIN ORY, *Their Att'y.*
(Signed) MRS. LEONTINE FAHRMAN &
Husband, JNO. G. FAHRMAN,
By BENJAMIN ORY, *Their Att'y.*
(Signed) MRS. TERESA L. SMITH &
Her Husband, R. H. SMITH,
By BENJAMIN ORY, *Their Att'y.*
(Signed) G. PIETRI. [SEAL.]

Sealed and delivered in presence of—
(Signed) S. F. GERKEN.
(Signed) E. P. QUINIUS.

Approved by—
(Signed) JOS. A. BREAUX,
Chief Justice.

UNITED STATES OF AMERICA,
State of Louisiana,
City of New Orleans, ss:

187 Personally appeared, Gaspar Pietri, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides in New Orleans, Louisiana and is worth the full sum of Fifteen hundred 00/100 ($1,500.00) Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) G. PIETRI.

Subscribed and sworn before me this 26th day of June 1911.

(Signed) BENJAMIN ORY.
[SEAL.] *Notary Public in New Orleans, La.*

(Endorsed:) Supreme Court of Louisiana. No. 18431. Mrs. Annie Brewer vs. (Bond) Yazoo and Mississippi Valley Rail Road Company. Filed June 29th, 1911. (Signed) Paul E. Mortimer, Clerk.

188 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing One hundred and eighty-seven pages contain a full, true and complete copy of the proceedings had in the Civil District Court for the parish of Orleans, in a certain suit wherein Mrs. Annie E. Brewer was plaintiff, and Yazoo and Mississippi Valley Rail Road Company, was defendant; and, also, of all the proceedings had in this Supreme Court on the appeal taken by said defendant, which appeal is now on the files thereof, under No. 18,431.

In testimony whereof I have hereunto set my hand, and affixed the seal of said Court at the city of New Orleans, this Eighth day of July, Anno Domini, one thousand, nine hundred and eleven, and of the Independence of the United States of America, the one hundred and thirty-sixth.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

189 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer, is Clerk

of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer, to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the Eighth day of July, A. D., one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

190 *Clerk's Certificate.*

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux, is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In witness whereof I hereunto set my hand and seal of the Court aforesaid, at the city of New Orleans this 8th day of July, A. D. one thousand, nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

191 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mrs. Annie E. Brewer, Plaintiff, and the Yazoo and Mississippi Valley Railroad Company, Defendants, and Etienne Gele; William Laferriere; Mrs. Widow Caroline Gele; Mrs. Catherine Pietri; Mrs. Leontine Fahrman; Mrs. Teresa L. Smith and their respective husbands, and John G. Gele, Defendants called in warranty by the said Yazoo and Mississippi Valley Railroad Company wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construc-

192 tion of the clause of the Constitution, or of a treaty, or statute, of, or commission held under the United States, and the de-

cision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Yazoo and Mississippi Valley Rail Road Company, and to the said Etienne Gele; William Laferiere; Mrs. Caroline Gele, Widow of Jean Marie Gele; Mrs. Catherine Gele, wife of Gaspar Pietri, by her husband duly authorized; Mrs. Leontine Gele, wife of John G. Fahrman, by her husband duly authorized; Mrs. Teresa L. Gele, wife of Robert H. Smith, by her husband duly authorized and John G. Gele Defendants called in Warranty by the said Railroad Company as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the said Supreme Court, the 29th day of June, in the year of our Lord one thousand nine hundred and eleven.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern Dist. La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX, *C. J.*

[Endorsed:] Supreme — of Louisiana. No. 18,431. Mrs. Annie E. Brewer versus Yazoo and Mississippi Valley Railroad Co. Writ of Error. Filed June 29, 1911. Paul E. Mortimer, Clerk.

193 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Mrs. Annie E. Brewer, 2607 Royal Street, City, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein you are ordered to show cause,

if any there be, why the judgment rendered against the said Yazoo and Mississippi Valley Rail Road Company, and the said Etienne Gele; William Laferriere; Wid. Caroline Gele; Mrs. C. Pietri; Mrs. L. Fahrman; Mrs. T. L. Smith and John G. Gele, Defendants, called in warranty as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 29th day of June (1911) in the year of our Lord, one thousand nine hundred and eleven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

194 [Endorsed:] Supreme Court of the State of Louisiana. No. 18,431. Mrs. Annie E. Brewer vs. Yazoo & Miss. Valley Railroad Co. Citation. Filed July 8, 1911. John A. Klotz, Deputy Clerk. Sheriff's Return. Served in Person July 3rd, 1911. Edw. J. Fleming, Dep. Sheriff. Filed June 29, 1911. Paul E. Mortimer, Clerk. Received Monday, Jul- 3, 1911, the within Citation of Appeal to the Supreme Court of the United States and on the same day, month and year I served a copy of the same on Mrs. Annie E. Brewer, plaintiff here in person. Edw. J. Fleming, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana.

STATE OF LOUISIANA,
Parish of Orleans:

Personally came and appeared before me, the undersigned authority, E. J. Fleming, Deputy Civil Sheriff for the Parish of Orleans, State of Louisiana, who, being duly sworn, deposes and says, that the foregoing return of the service made by him on Mrs. Anna E. Brewer, is true and correct, and that the said service was made in person on the said Mrs. Brewer on the day and date shown in the said return.

EDW. J. FLEMING.

Sworn to and subscribed before me on this, the 7th, day of July, 1911.

[Seal John Clarence Davey, Notary Public, Parish of Orleans, La.]

JOHN C. DAVEY, JR.,
Notary Public.

Endorsed on cover: File No. 22,810. Louisiana Supreme Court. Term No. 62. Yazoo & Mississippi Valley Railroad Company, Etienne Gele et al., plaintiffs in error, vs. Mrs. Annie E. Brewer. Filed July 21st, 1911. File No. 22,810.

FILED
NOV 10 191
JAMES D. MAH
CL

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE *ET ALS.*,
Plaintiffs in Error,

versus

MRS. ANNIE E. BREWER,
Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

CHARLES N. BURCH
H. D. MINOR
of Counsel

HUNTER C. LEAKE,
GUSTAVE LEMLE,
BENJAMIN ORY,
Attorneys for Plaintiffs in Error.

HAUSER PRINTING CO., "The Legal Printers," 620-22 Poydras St., N. O., La.

SUBJECT OF INDEX.

PAGE.

State of Facts in the Case..... 1

Statement of the Pleadings in the case..... 3

Argument in the Case..... 4

List of Citations.

Articles of the Code Cited, C. C. 2266..... 4

Wisner vs. Brown, 122 U. S. 214..... 5

Gifford vs. Helms, 98 U. S. 248..... 7

Havel vs. Gage, 31 F. R. 275..... 8

Taylor vs. Irwin, 20 F. R. 615..... 8

Rock vs. Dennett, 30 N. E. R. 171..... 9

Green vs. Taylor, 132 U. S. 415..... 15

Revised Statutes of U. S., Sec. 5057..... 3

Bankruptcy Law of 1867..... 3

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE *ET ALS.*,

Plaintiffs in Error,

versus

MRS. ANNIE E. BREWER,

Defendant in Error.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

STATEMENT OF FACTS IN THIS CASE AS SHOWN BY THE TRANSCRIPT.

In this case, as appears from the transcript, there is extant and of record in the Conveyance Office of the Parish of Orleans two distinct, separate, adverse chains of title to the same property.

One of them is as follows:

The Yazoo and Mississippi Valley Railroad Company claimed title by purchase, November 22, 1898, from J. M. Gele, Etienne Gele, William Laferriere. (Tr., p. 45.)

The latter claimed title by purchase from Bernard Recurt, March 31, 1897, title registered in Conveyance Office Book 163, folio 147, April 7, 1897. (Tr., p. 62.)

Bernard Recurt claimed title by purchase from the widow and heirs of George Babcock, Conveyance Office Book 166, folio 15, September 8, 1896. (Tr., p. 64.)

George Babcock claimed title by purchase from H. C. Boucher, Conveyance Office Book 132, folio 168, January 16, 1872. (Tr., p. 68.)

H. C. Boucher claimed title by purchase from the Succession of Henry Parish, by title dated April 25, 1871. (See derivation of title given in sale by H. C. Boucher to George W. Babcock, Tr., pp. 68, 69, and admission of Mrs. Annie E. Brewer, in supplemental petition, Tr., pp. 6, 7.)

The other chain of title to this property—the one under which Mrs. Annie E. Brewer claims—is as follows:

Mrs. Brewer purchased from Charles H. Reed, assignee of George Brewer, bankrupt, as per deed before W. H. Seymour, notary, dated November 23, 1876, for $2.50, "all the right, title and interest, claim, ownership and demand vested in him, Reed, as assignee, in and to Square 150, subject to any and all encumbrances." (See Tr., pp. 36, 37, 38, 39.)

George Brewer claimed title by purchase, June 9, 1860, from the Succession of Henry Parish Conery. (Tr., pp. 29, 30, 31.)

Henry Parish Conery claimed title under the will of Henry Parish, as per the sixth clause of said will. (Tr., p. 90.)

STATEMENT OF THE PLEADINGS IN THIS CASE.

On November 18, 1908, Mrs. Widow Annie E. Brewer brought a petitory action against the **Yazoo and Mississippi Valley Railroad Company,** wherein the plaintiff prayed to be recognized as the owner of part of Square 150, in the Sixth District of New Orleans, and prayed for citation to said railroad company. (Tr., p. 3.)

The said railroad company answered, claiming title by purchase from J. M. Gele, Etienne Gele and William Laferriere, and prayed that they, the latter, be called in warranty. (Tr., p. 8.)

The said three parties, J. M. and Etienne Gele and William Laferriere, answered, claiming title by purchase from Bernard Recurt, setting out their title in full back to the succession of Henry Parish, alleging physical possession, and pleading **in the lower court** the prescription of five, ten and thirty years. (Tr., p. 12.)

The same parties, Gele and Laferriere, in the **Supreme Court of the State of Louisiana,** filed and presented in open court, on March 4, 1911, the plea of prescription of two years under the bankruptcy law of March, 1867, now contained in the Revised Statutes of the United States, Section 5057, which provides:

> "No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest touching any property transferable to, or vested in, such assignee, unles brought within two years from the time when the cause of action accrued for or against such assignee."
>
> Tr., p. 108.

On trial in the Supreme Court, on the first hearing and on rehearing, the Court refused to support the prescription

pleaded, and denied to the pleaders the protection afforded by said plea. (Tr., p. 116.)

From the judgment of the Supreme Court so denying to them the benefit and application of said statute this writ of error is prosecuted. (Tr., pp. 122, 117.)

ARGUMENT.

The statute under which plaintiffs in error are asserting their rights directs that no suit shall be maintainable against a person **claiming an adverse interest,** unless this suit is brought within two years from the time when the cause of action accrues.

There must, therefore, be two things necessary to set the statute of limitation running—**an adverse interest** and an **accrued right of action.** Let us for a moment reverse the phrase and say:

"A cause of action accrues as soon as an adverse interest is claimed."

This is surely the true and correct meaning of this law. If it does not mean that, it means nothing at all.

In Louisiana a cause of action accrues as soon as an adverse title is placed of record in the Conveyance Office, because the record **is notice to the world** of the adverse claim of title.

The Civil Code of the State of Louisiana, Article 2266, provides as follows:

> "All sales, contracts and judgments affecting immovable property not recorded shall be utterly null and void, except between the parties thereto. The recording may be made at any time, but shall only affect third persons from the time of the recording."

We therefore submit that as soon as this entry of an adverse title was placed of record in the Conveyance Office of this parish, in 1871 and 1872, no one could plead ignorance thereof, not even the assignee in bankruptcy and those claiming under him.

As soon as the assignee was appointed, the statutory limitation of two years commenced to run on the adverse interest claimed against him, and continued so to run against his transferee, Mrs. Brewer. As to vacant land or property, the cause of action accrues as soon as the adverse title is placed of record. Such is, and was, the contention of plaintiffs in error in the Supreme Court of Louisiana, where the plea was filed, and we now submit that this has been, and still is, the jurisprudence established by the highest Court in the land—the present Court.

We submit that the recording of the title to the property involved in this suit in 1871 to H. C. Boucher, and in 1872 to George W. Babcock, created, as against George Brewer, his assignee in bankruptcy, and Mrs. Brewer, a living, active and notorious claim of **adverse interest,** which they could not deny, and could not ignore, especially in view of the fact that Boucher and Babcock were paying taxes on the property under assessments in their own names.

Let us now attempt to place before the Court the jurisprudence which we believe sustains the contention of plaintiffs in error.

In **Wisner vs. Brown, 122 U. S. 214,** on a writ of error to the Supreme Court of Michigan, the Supreme Court of the United States, in stating the facts, said:

> "This is an action by Wisner, the plaintiff in error, against Brown and others for a lot of ground in Isabella County, Michigan. The plaintiff claimed the land as purchaser from one Gillettee, assignee in

bankruptcy of Alfred Willey. The defendants claim the same under a number of tax sales and a deed from Willey, the bankrupt.

"Willey was decreed a bankrupt in 1872, and Gillette was appointed his assignee in 1873.

"The defendant Brown claimed title to the property in controversy under tax sales for taxes for the years 1867 and 1868, and also under a quitclaim deed from Willey, the bankrupt, to him, Brown, dated September 11, 1875, **and duly recorded.**

"In April, 1880, the bankruptcy court authorized Gillettee, the assignee, to sell the property, and in April, 1880, a deed was made for the land by the assignee to Wisner.

"Wisner, the purchaser from the assignee in bankruptcy, a short time after his purchase, brought ejectment proceedings **in the State Court of Michigan** against **Brown,** the purchaser from Willey, the bankrupt, and purchaser at tax sale. In the lower State court there was judgment in favor of Brown and against the plaintiff Wisner. On appeal to the Supreme Court of Michigan, that tribunal affirmed the judgment of the lower Court."

The Supreme Court of the United States, in continuing the recital of the facts, said:

> "The present writ of error is brought to review the judgment of the Supreme Court [of Michigan] on the ground that its decision was against the validity of a title claimed under the laws of the United States—namely, under the proceedings in bankruptcy."

The Supreme Court, on the writ of error, sustained the judgment of the lower Court of Michigan and the State

Supreme Court, on the ground that the limitation of two years provided by the bankruptcy law was a good bar against the suit, and in so deciding said:

> "Now, the assignee in the present case received his appointment in February, 1873, and the property in question was **at that time adversely held** by the defendant Brown under tax sale, and continued to be so held until the commencement of this suit. It is clear, therefore, that from and after February, 1875, the assignee himself was precluded by the statute from bringing an action to recover the land; and he could not, after that time, **by selling them to a third person,** enable the latter **to maintain an action therefor."**

In **Gifford vs. Helms,** reported in **98 U. S. 248,** Gifford brought suit in the Circuit Court of the United States for the recovery of certain property purchased by him in the bankruptcy of Helms, Sr. The son of the bankrupt and his mother held adverse titles to the property claimed by Gifford as transferee. The Helms pleaded the prescription of two years against the right of action, but the Circuit Court refused to sustain the plea. And on their appeal to the Supreme Court of the United States that exalted tribunal reversed the judgment, and, in deciding the case, said:

> **"Purchasers from an assignee in bankruptcy** of property transferable to or vested in him as such **cannot maintain a suit** in equity asserting their title to such property against persons **claiming adverse rights therein,** if, at the time of the purchase, his (the assignee's) right of action was, under the bankruptcy act **(14 Stat. 517; Rev. Stat., Sec. 5057),** barred by the lapse of time."

In the case of **Havel, Assignee, vs. Gage,** reported in **31 Federal Reporter, page 275,** an assignee in bankruptcy brought suit to remove the **inscription of adverse tax deeds** to certain property which was, he claimed, **in his actual possession;** and the defense was that his cause of action had existed for more than two years since his appointment, and that his right of action was barred. The Court sustained the defense, and in doing so said:

> "The obvious object of the bankruptcy act, and of the provisions contained in Section 5057, is to secure celerity in the administration and closing up of bankrupt estates. Hence, it is made **the duty** of the assignee to proceed within two years **to remove any clouds** upon the title, **or contest any adverse claim to any property** of the bankrupt at the time he becomes invested with the title; and, as to clouds of adverse claims which arise upon the title to the property after he becomes clothed with it, he must proceed within two years after his cause of action accrues; and his cause of action accrues certainly **as soon as the adverse title is asserted,** and the record of such title **made upon the land records."**

In the case of **Taylor vs. Irwin,** reported in **20 Federal Reporter, page 615,** the facts as reported by the Court are as follows:

In December, 1876, Joseph Cain was adjudged a bankrupt. An assignee in bankruptcy was appointed in January, 1877, and the bankrupt's estate assigned to him in the same month. . .

In April, 1881, Joseph Cain and wife sold the property in question to Harvey E. Buck, the deed was duly recorded in Calhoun County in May, 1881, and in October,

1881, Buck and wife sold the premises to Irwin, the defendant.

In March, 1883, the assignee in bankruptcy sold the property by quitclaim deed for $10 to Taylor, the plaintiff, who recorded his deed, and on the 28th of the same month Taylor brought **ejectment** proceedings against defendant in the Circuit Court for North Dakota.

As a defense to this suit, the defendant Irwin pleaded the prescription of two years provided by the bankruptcy law, and the Court, in sustaining the defense, uses the following language:

> "By the express provisions of the bankruptcy act, it was made the duty of the assignee to bring suit for the recovery of property belonging to the estate, and not in his possession, within two years after the cause of action accrued to him. A failure on his part to do so would bar his right to maintain an action at law or in equity, except in cases where the relief sought is against a fraud practiced by the opposing party.
>
> "In the case at bar, it appears that the assignee did not take possession of the property in question, or assert any right thereto, or do any act affecting the property, for more than six years after the adjudication in bankruptcy.
>
> "This delay would bar his right, **or that of one in privity with him,** unless such delay was caused by fraud or deceit on the part of defendant or those under whom he holds title. And the Court, for those reasons, gave judgment for the defendants, and sustained the plea of prescription pleaded."

We also call the Court's attention to the case of **Rock vs. Dennett,** reported in **30 Northeastern Reporter, page**

171, wherein the facts as stated by the Court were as follows:

> "The defendant claims under a deed from an assignee in bankruptcy, made January 24, 1889.
>
> "Whatever right the assignee had, he acquired as part of the bankrupt's estate in March, 1876 [the same year as the bankruptcy of George Brewer]. He had never entered upon or been in possession of the premises until the time of the delivery of his deed. Since, if the premises had been unoccupied or occupied with his consent, the possession would have followed his title, it results that, from March, 1876, until January, 1889, the possession **had been held adversely to him.**
>
> "The defendant must recover on the strength of his own title, and has no better right than the assignee.
>
> **"The assignee's right of action was barred before he made the deed by the provisions of the Revised Statutes of the United States, Section 5057.**
>
> "The judgment of the Superior Court of Norfolk County, Massachusetts, was against Rock, the transferee of the assignee in bankruptcy, and in favor of Dennett and others, who had pleaded the limitation of two years, although the suit was brought by the transferee subsequent to January, 1889, and long after the repeal of the bankruptcy law of 1867. And the Court, in deciding the case and sustaining the prescription pleaded, refers to the act of Cnogress of June 7, 1878, repealing the bankruptcy law, in the following language:
>
> " 'The act of Congress of June 7, 1878 (20 U. S. Stat., page 99), relating to the repeal of the bankruptcy law, and providing that such repeal should in no manner affect any case in bankruptcy instituted prior to the day when the act should take effect, but that as to all rights except those of com-

mencing original proceedings in bankruptcy, and all suits by or against assignees which should have arisen prior to that time, the statutes thereby repealed should continue in full force until the same were disposed of, left all cases which had already come within the scope of the bankruptcy laws, **to be still covered by their provisions.**

" 'Congress has power, under the authority given by the Constitution, to establish uniform laws on the subject of bankruptcies, **to regulate the limitation of real actions** by or against assignees in bankruptcy, even though the law should conflict with the statute of limitations of the State where the land is situated, and the cause of action should arise wholly after the assignment.

"Revised Statutes of the United States, Section 5057, limiting the time within which suit may be brought between an assignee in bankruptcy and a person claiming an adverse interest touching any property * * * transferable to or vested in such assignee, applies to all suits, whether the assignee, **or a purchaser of the assignee,** is a party, and whether the claim arose before or after the assignment.' "

In the case of **Green vs. Taylor, 132 U. S. 415,** it was shown that suit was brought in the Circuit Court of the United States, **not the bankruptcy court,** by James Taylor, who had purchased from the assignee in bankruptcy of W. S. Robertson, against David R. Green, who had purchased from the owner under foreclosure of a trust deed.

The sale under the trust deed was made in October, 1878. The assignee in bankruptcy (of Robertson) was appointed in July, 1879, and an assignment of all the property of the bankrupt was made to the assignee.

On April 24, 1880, the assignee in bankruptcy sold the property to Taylor through L. G. Pratt, the latter's trustee, for $250. In December, 1880, the bankrupt was discharged.

In September, 1881, the sale to Green was attacked by the transferee, Taylor, and Green then pleaded the prescription of two years. The lower Court refused to sustain the prescription of two years, and the widow and heirs of Green took an appeal to the Supreme Court of the United States, and that Court reversed the judgment of the Circuit Court, and in doing so said at page 440 of the decision:

> "But we do not find it necessary to consider any of these questions, because we are of the opinion **that the right of action** of the plaintiffs under their title **derived from the assignee in bankruptcy** was barred by the two years' limitation enacted by the bankruptcy statute."

At page 442 the Court, in the same opinion, says:

> "The purchaser takes the right *cum onere*, subject to the continuance of the running of the statute, and **subject to the fact that a part of the two years has already run as against the claim or right while in the hands of the assignee,** and to the consequence that, when sufficient additional time shall have run against it, **in the hands of the purchaser,** to make up the entire two years, the claim or right will be wholly barred.
>
> "No initiation of a new period of limitation, under any statute, begins to run in favor of the purchaser at the time of his purchase, whether the two years wholly elapsed, or only a part thereof elapsed, while the claim was owned by the assignee."

We submit that all of these cases show that the Court was in error in refusing to sustain the prescription of two

years pleaded by appellants. And, to use the language of the Court in **Green vs. Taylor, 132 U. S., page 442,** we will say:

> "These cases show that a conveyance by the assignee in bankruptcy cannot prevent the operations of the bar of the statute against the grantee when it has already run against the assignee, or bring into action a new period of limitation dating from the time of the conveyance. Nor can it **interrupt** the running of the statutes against the claim or right when it has once commenced to run as against the assignee.
>
> "The purchaser takes the right *cum onere*, subject to the **continuance of the running of the statute,** and subject to the fact that a part of the two years has already run as against the claim or right while it was in the hands of the assignee, and to the consequence that when sufficient **additional time** shall have run against it **in the hands of the purchaser,** to make up the entire two years, the claim or right will be wholly barred."

Nor can Mrs. Brewer escape the bar of the statute by claiming that she was ignorant of her rights, and did not discover the existence of the two adverse titles which existed already at the time of her purchase, for they were of record in the public archives, as required by law.

And this we charge, because, again using the language of the Court in **Green vs. Taylor,** at **page 443:**

> "Here was information accessible to the assignee in bankruptcy when he was appointed, and accessible to her; information which he or she was bound to take notice of, being in a public record."

Let us now again refer to the question relative to the time at which the cause of action accrued herein to the assignee of George Brewer and to his transferee, Mrs. Brewr.

This seems the vital point in this case; and for that purpose the law of Louisiana, we submit, is to be consulted.

We have already stated that, under the Civil Code of Louisiana, and particularly Article 2266, which provides that:

> "All sales, contracts and judgemnts affecting immovable property not recorded shall be utterly null and void except between the parties thereto.
>
> "The recording may be made at any time, but shall only affect third persons from the time of the recording."

And this provision is also confirmed and amplified by Article 2262 of the Civil Code, which provides that:

> "In the Parish of Orleans, acts, whether they are passed before a notary public or otherwise, shall have no effect against third persons, but from the date of their being deposited in the office of the Register of Conveyances."

From the effect of the above-mentioned provisions, in Louisiana a cause of action accrues for what is known under the civil law of Louisiana as an action "for slander of title" from the very date of the recording of an adverse title.

We particularly call the Court's attention to the two recent cases reported in the **130 La. Annual, page 657,** and the case of **Lacroix vs. Villio, 123 La. Annual, page 459.**

In the case of **Atchafalaya Land Company, Limited, vs. Brownell-Drews Lumber Company, 130 La. Annual, page 657,** the Court says:

> "A party claiming ownership by title duly recorded, but who is not in actual possession, may sue another, also out of possession, for slander of title, caused by his recording a title."

In that case neither party claiming title was in physical possession, but the action was sustained by the Supreme Court, and judgment rendered therein.

In the other case cited, that of **Lacroix vs. Villio, 123 La. Annual, page 459,** the Court in its syllabus says:

> "Where a party not in actual possession, but claiming to be the owner of certain real estate, brings suit against another not in actual possession, alleging that the latter has inflicted injury upon him by causing to be inscribed in the public records a pretended and fraudulent adverse title, he has a standing in court, and if his allegations be sustained by proof, he is entitled to damages under Civil Code, Articles 21 and 2315, though his action be not specifically classified by the Code of Practice."

Thus it is clearly seen that a cause of action accrued to the assignee in bankruptcy of George Brewer, as soon as he was appointed, growing out of the adverse title recorded by Boucher and Babcock in 1871 and 1872.

The assignee of the bankrupt Brewer was apointed as such by decree of the bankrupt court, dated January 15, 1876 (Tr., p. 35), and the statute of limitation of two years commenced to run against him from that date—so says the Court in **Bank vs. Sherman, 101 U. S., page 403.** So that on January 15, 1878, the two years' limitation had been completed and barred out the cause of action which the assignee had, and which was continued vested in his transferee, Mrs. Brewer.

This, we submit, was clearly decided by the Supreme Court of the United States in the case of **Green vs. Taylor,** reported in **132 U. S., page 415,** in the following language:

> "The purchaser takes the right *cum onere,* subject to the continuance of the running of the statute

> and subject to the fact that a part of the two years has already run as against the claim or right while in the hands of the assignee, and to the consequence that, when sufficient additional time shall have run against it, in the hands of the purchaser, **to make up the entire two years,** the claim or right will be wholly barred."

We know that defendant in error strenuously contends that the limitation begins to run only from the time that physical possession of the property has been taken adversely to the assignee or the one claiming under him. But we earnestly submit to the Court that, under the civil law of this State, where a cause of action "accrues to the assignee in the case of vacant land from the date of his appointment when confronted with a recorded adverse title or adverse claim of interest," then the fact of adverse possession is immaterial, and does not relieve this assignee from the necessity of bringing his action to quiet his title, whatever may be the law in other jurisdictions.

We contend, however, that this is not the law, even outside of the limits of the State of Louisiana; and this has been decided by the Circuit Court of the United States in the case of **Harvey, Assignee, vs. Gage,** reported in the **31 Federal, page 275.**

That was a case wherein a Mr. Harvey, in December, 1873, was appointed assignee in bankruptcy of the Franklin Bank, and took physical possession of a piece of real estate against which one Henry H. Gage held two tax deeds issued to him (Gage) in February, 1877, and April, 1880.

The assignee brought suit to cause the recorded tax deeds to the property of the bankrupt cancelled and annulled on the ground that said deeds and the record thereof

were a cloud upon complainant's title to said property, and that he (the assignee) was entitled to the cancellation of said recordation by reason of the illegality of the taxes levied upon.

The defense to this suit was the limitation of two years, which was pleaded against the action for quieting the title and removing the cloud. There was judgment against the assignee denying the relief prayed for, and the Court in so deciding said:

> "The obvious object of the bankrupt act and of the provision contained in Section 5057, is to secure celerity in the administration and closing up of bankrupt estates; hence, it is **made the duty** of the assignee to proceed within two years **to remove** any clouds upon the title, or contest any adverse claim to any property of the bankrupt **at the time he becomes vested with the title;** and as the clouds or adverse claims which arise upon the title to the property after he becomes clothed with it, he must proceed within two years after his cause of action accrues; and this cause of action accrues certainly as soon as the adverse title is asserted **and the record of such title made upon the land records.** In this case it appears that one of these tax deeds was obtained and duly recorded in 1877, and the other in 1880, and this suit was not commenced until December 11, 1886; so that more than two years had passed after these deeds **were made,** and after a right of action to have them removed as **coluds** upon the complainant's title, if they were clouds, had **accrued** to the complainant."

With a right of action "accrued" to the assignee of Mr. Brewer growing out of the recordation of titles adverse to the bankrupt clearly given by the Louisiana law, and with the jurisprudence recognizing this right of action to the

assignee or his transferee, Mrs. Brewer, as clearly shown in the case of **Green vs. Taylor, 132 U. S., page 415,** and particularly the case of **Harvey vs. Gage, 31 Federal Reporter, page 275,** we submit that the judgment of the Supreme Court of Louisiana was an error, because it denied to plaintiffs in error the protection of said statute, and the same should be overruled and decreed erroneous.

Before closing, we now wish to submit to the Court that this writ of error is prosecuted by Etienne Gele, William Lafferiere and the widow and heirs of J. M. Gele, who were defendants below, called in warranty, and that their right so to do has been recognized by the Supreme Court of the United States in many cases, and particularly in the cases of **Germain vs. Mason, 12 Wallace, 259; Cox vs. United States, 6 Peters, 172,** and in these cases the Court sustained the writs in the following language:

> "Though several defendants may be affected by a judgment or decree, there may be such a separate judgment or decree against one of them that he can appeal or bring a writ of error without joining the other defendants."

We, therefore submit that clearly the judgment of the Supreme Court of Louisiana was erroneous and the same should be annulled and reversed, with costs, and the judgment of the Civil District Court for the Parish of Orleans rendered in this case against these plaintiffs in error, defendants below, be dismissed.

Respectfully submitted,

HUNTER C. LEAKE,
GUSTAVE LEMLE,
BENJAMIN ORY,
Attorneys for Plaintiffs in Error.

ARLES N. BURCH

D. MINOR

of Counsel

3

Supreme Court of the United States

OCTOBER TERM, 1913.

Office Supreme Court,
FILED
NOV 7 1913
JAMES D. MAHE
CL

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE *ET AL.*,
Plaintiffs in Error,

versus

MRS. ANNIE E. BREWER.

Error to the Supreme Court of the State of Louisiana.

BRIEF FOR MRS. ANNIE E. BREWER, DEFENDANT IN ERROR.

J. BLANC MONROE,
MONTE M. LEMANN,
Attorneys for Defendant in Error.

HAUSER PRINTING CO., "The Legal Printers," 620-22 Poydras St., N. O., La.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE *ET AL.*,
Plaintiffs in Error,

versus

MRS. ANNIE E. BREWER.

Error to the Supreme Court of the State of Louisiana.

BRIEF FOR MRS. ANNIE E. BREWER, DEFENDANT IN ERROR.

We are compelled to send this brief to press without seeing the brief of the plaintiffs in error, who have not complied with the rules of the Court with regard to filing of briefs, although we have withheld this brief until the last moment, in the hope of an opportunity to see their brief and to reply to it. Indeed, the record in the case itself was not received from the printer, owing to the failure of plaintiffs in error to make the necessary deposit, until the day that this brief went to press.

STATEMENT OF THE CASE.

Mrs. Annie E. Brewer, the defendant in error, brought this suit in the Civil District Court for the Parish of Orleans, State of Louisiana, against the Yazoo and Mississippi Valley Railroad Company to establish her title to a square of ground in the City of New Orleans. The suit was brought under the provisions of the Acts of Louisiana, No. 38 of 1908, page 38, of the Session Laws of that year, a copy of which is printed *infra* at page 16.

The Yazoo and Mississippi Valley Railroad Company called in warranty its vendors, that the latter might undertake the burden of defending the title. These vendors, in turn, called in their vendors, and, by repetition of this process, three sets of warrantors were impleaded.

The District Court gave judgment in favor of the plaintiff in the original action (defendant in error here), establishing her title to the square in question, subject to a servitude of way in favor of the railroad company. Judgment was rendered in favor of the railroad company and against its vendors upon their warranty, and in favor of each set of vendors against their respective warrantors. (See printed record, p. 81.)

The railroad company and its respective vendors, under whom it claimed, prosecuted a joint appeal to the Supreme Court of Louisiana. That Court affirmed the judgment of the District Court in favor of the original plaintiff, establishing her title to the square, but dismissed all the claims in warranty.

See **Brewer vs. Yazoo & Miss. Valley R. R. Co., 128 La. 544.**

This writ of error has been prosecuted **only** by the vendors of the railroad company, the Geles and Laferrieres. The railroad company itself and the other vendors in the

chain of title who were called in warranty below are not parties to the writ and not before the Court.

The only Federal question in the case relied upon to give this Court jurisdiction is a plea of the Statute of Limitations set up under the provisions of Section 5057 of the Revised Statutes, which reads:

> "No suit, either at law or in equity, shall be maintainable, in any court, between an assignee in bankruptcy and a person claiming an adverse interest, touching any property or right of property transferable to, or vested in, such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee. And this provision shall not, in any case, revive a right of action barred at the time when an assignee is appointed."

Application of this section to this case is sought to be justified by the fact that the defendant in error (plaintiff below) acquired title to the property in question on November 23, 1876, from Charles H. Reed, assignee in bankruptcy of one George Brewer, whose appointment as assignee was made in January of that year. It is argued that, inasmuch as this suit was not brought until 1908, or thirty-two years after the appointment of the assignee, and after the defendant in error's acquisition, it is barred by the section of the Revised Statutes quoted, although no cause of action ever accrued to the assignee.

Both plaintiffs in error and defendant in error trace title ultimately to one Henry Parish, who acquired undisputed title in 1848. Henry Parish died, and by his will, which was ordered executed in Louisiana in April, 1868, he devised this square in controversy to Henry Parish Conery. The succession of Henry Parish Conery was duly opened in Louisiana and the property sold at an administrator's sale under order

of court on June 9, 1860, to George Brewer. George Brewer went into bankruptcy in December, 1875, Charles H. Reed being appointed assignee in January, 1876. Defendant in error acquired the property from George Brewer's assignee in bankruptcy on November 23, 1876.

This is the chain of title of the defendant in error.

The title of the plaintiffs in error is traced to Henry Parish in the following manner:

In apparently inadvertent disregard of the provisions in Henry Parish's will, by which the square here involved was specifically devised to Henry Parish Conery, the executor of Henry Parish applied for an order to sell the property as belonging to the estate of Henry Parish. This order was granted and the property sold to one Henry C. Boucher on April 25, 1871—eleven years after the sale to George Brewer, the author in title of the defendant in error. Boucher sold on January 15, 1872, to one George W. Babcock. Babcock sold to Recourt on September 8, 1896. Recourt sold to Gele & Laferriere, who are the plaintiffs in error, on March 31, 1897. Gele & Laferriere sold to the railroad company on November 22, 1898.

The Supreme Court of Louisiana held that the will of Henry Parish had vested the property in question in Henry Parish Conery, and that the title had passed out of Henry Parish Conery by the sale in his succession, and had become legally vested in George Brewer, then in his assignee in bankruptcy, and finally in the defendant in error. The Supreme Court of Louisiana further held that the title of the railroad company, defendant below, derived from plaintiffs in error, was radically null and void, because based on a sale in the succession of Henry Parish, which, by the will, had been divested of ownership, and because provoked by one who had not qualified as executor, upon an allegation that the succession owed no debts (the existence of debts being a jurisdictional requirement in Louisiana for a sale

by an executor in the absence of special testamentary authority).

Before entering upon a discussion of the merits of the case presented by the plaintiffs in error, we desire to invite the attention of the Court to two circumstances which we believe require the dismissal of this writ of error. Those circumstances are:

First. That the present plaintiffs in error were not prejudiced by the decision below, and have no appealable interest.

Second. That the proper parties are not before the Court, because the main defendant (the Yazoo and Mississippi Valley Railroad Company) and the other vendors in the chain of title who were called in warranty in the suit have not been made parties in any way to this writ of error.

We elaborate briefly upon these circumstances:

First. As pointed out in our statement of the case, and as will appear by reference to the record at page 109, all claims against the warrantors were by the judgment of the Supreme Court finally rejected. The plaintiffs in error here are the warrantors of the original defendant railroad company. By a petition for rehearing, which appears at pages 120 and 121 of the printed record, the defendant railroad company called the attention of the Supreme Court to the fact that its right of recourse against its warrantors had been finally denied by the judgment, and asked for an amendment to the judgment so as to reserve its rights against its warrantors. If this application for rehearing had been granted and the judgment amended, the interest of the railroad company's warrantors would be clear. As a matter of fact, however, as will appear by reference to the printed record at page 122, the application for rehearing was denied.

This is *res adjudicata* as to the liability of the warrantors of the defendant railroad company, and obviously eliminates them from any interest in the controversy.

This writ of error, however, is prosecuted by the Geles and Laferrieres only (the railroad company's warrantors). (See page 122 of the printed record.)

The railroad company did not prosecute any writ of error, and, indeed, is not a party to this proceeding at all.

It results from the foregoing statement, clearly, that the plaintiffs in error (the railroad's warrantors) have no appealable interest, because they were not prejudiced by the judgment below, which denies finally all claims against them. The case is accordingly controlled by the general principle that no right to appeal exists in any party not aggrieved.

Crawshay vs. Soutter & Knapp, 6 Wall. 739.
Lewis vs. United States, 216 U. S. 611.
Anglo-American Provision Co. vs. Davis Provision Co., 191 U. S. 376.

Second. The second circumstance referred to as requiring the dismissal of this writ is the fact that the other parties jointly in interest with the plaintiffs in error have not been in any way made parties to this proceeding. It is obvious that, if the plaintiffs in error have an interest which entitles them to an appeal, the same interest jointly exists in the original defendant, the railroad company, and also in the vendors of the plaintiffs in error, who were by plaintiffs in error called in warranty, and in the vendors of those vendors, who were also called in warranty.

It is well settled by the repeated decisions of this Court that all parties jointly interested must be before the Court upon a writ of error or an appeal. If all parties so interested would not join in the application for the writ of error, the remedy of the particular party wishing to prose-

cute the writ is by way of summons and severance. Nothing of this sort was done in this case. The writ of error was sued out upon the application of one set of warrantors (those of the original defendant railroad company) alone, as will appear by reference to the printed record at page 122. The citation was served upon the original plaintiff below alone, as will appear by reference to the printed record at page 130.

The original defendant railroad company and the other vendors in the chain of title called into the original proceeding as warrantors were not served with any sort of process or summons, and are not in any manner before the Court or parties to this proceeding.

In this aspect, the case is controlled by the following authorities in this court:

Hardee vs. Wilson, 146 U. S. 179.
Masterson vs. Howard, 10 Wall. 416.

See, also:

Beardsley vs. Arkansas, etc., Railroad, 158 U. S. 123.
Davis vs. Mercantile Trust Co., 152 U. S. 590.
Inglehart vs. Stanbury, 151 U. S. 68.

Upon this ground also, therefore, the writ of error should be dismissed.

Coming now to a discussion of the case on its merits:

ARGUMENT.

The only question before this Court in this case is whether the suit of the defendant in error, plaintiff below, is barred by the provisions of Section 5057 of the Revised Statutes. The reply of the defendant in error to the contention that it is so barred is this:

First. That the language of the statute expressly provides that the limitation runs only "two years from the time when the cause of action accrued for or against such assignee."

Second. That, under the law of Louisiana, the cause of action here asserted by the defendant in error did not accrue in favor of the assignee in bankruptcy, under whom defendant claims, or in favor of George Brewer, the bankrupt.

We take these points up for discussion in order.

I.

The limitation of R. S. 5057 runs only from the time when the cause of action accrued for or against the assignee or the bankrupt.

This proposition is established by the wording of the statute itself. The section reads:

> "No suit, either at law or in equity, shall be maintainable in any court between an assignee or bankrupt and a person claiming an adverse interest, touching the property or rights of property transferable to or vested in such assignee, unless brought within two years **from the time when the cause of action accrued for or against such assignee."** (Our black-letter.)

This language does nothing more than state the elementary principle of law, founded on obvious principles of common-sense and justice, that no limitation can begin to run until a cause of action has accrued. It would be absurd to provide for the accrual of limitations against a right for the assertion of which in the courts no occasion, or, indeed, opportunity, existed.

Section 5057 was originally a part of the Bankruptcy Act of 1867, and finds its place in the official compilation of

the Revised Statutes under the title devoted to bankruptcy. It clearly and expressly pertains only to causes of action accruing for or against bankrupt estates. Indeed, although the wording of the statute might have justified its application to a cause of action not existing at the time of the adjudication in bankruptcy, but arising for the first time after the appointment of the assignee, your Honors have squarely decided that the statute is not to be so construed, and must be confined to causes of action which had accrued against or in favor of the bankrupt himself prior to the adjudication.

See **Dushane vs. Beale, 161 U. S. 513,** where the Court said:

> "That limitation [Section 5057, Rev. Stat.] is applicable only to suits growing out of disputes in respect to property and of rights of property of the bankrupt which came into the hands of the assignee, to which adverse claims existed while in the hands of the bankrupt, and before assignment."

In a recent case the correctness of this construction was questioned, and your Honors were urged to adopt the contrary view supported by the Supreme Court of Massachusetts in the case of **Rock vs. Dennett, 155 Mass. 500,** where it was held that the limitations expressed by Section 5057 applied to adverse claims arising after the assignment in respect to property vested in the assignee.

In reply to this contention your Honors said:

> "Defendant in error contends for the construction expressed in **Rock vs. Dennett, 155 Mass. 500,** against that expressed in **Dushane vs. Beale, 161 U. S. 513,** and insists that the latter case does not overrule prior cases upon which **Rock vs. Dennett** was based.
>
> "We will not stop to reconcile **Dushane vs. Beale** with prior cases. It is a later utterance by this Court,

and disposes of the contention of plaintiff in error based on Section 5057 of the Revised Statutes."

See **Hammond vs. Whittridge, 204 U. S. 538.**

The object of Congress in enacting Section 5057 was undoubtedly to facilitate the expeditious settlement of bankrupt estates by preventing contests with the assignee as to claims arising prior to his appointment. It was designed to prevent the assignee from bringing suits indefinitely to set aside fraudulent conveyances or to collect old debts, and similarly to protect the assignee from the risk of suits being brought against him for an indefinite period. It was sought by this means to assure the liquidation of bankrupt estates within a period of two years from the appointment of the assignee, and to permit the discharge of the assignee and the final distribution of dividends within that period. This result would have been impossible or difficult to obtain if the assignee were permitted to delay the institution of suits for the comparatively long periods permitted by the ordinary State statutes of limitation, or if the assignee were exposed during those comparatively long periods to suits against him. An analogous provision, designed to permit the early final closing of bankrupt estates, is to be found in the present Bankruptcy Act, Section 11 *d*. The object aimed at in the statute is well explained in the leading case interpreting it in this court.

See **Bailey vs. Glover, 21 Wallace, 342,** where the Court said:

> "It is obviously one of the purposes of the bankrupt law that there should be a speedy disposition of the bankrupt's assets. This is only second in importance to securing equality of distribution. The act is filled with provisions for quick and summary disposal of questions arising in the progress of the case without regard to usual modes of trial attended by some necessary delay. Appeals in some instances

must be taken within ten days. To prevent the estate being wasted in litigation and delay, Congress has said to the assignee: You shall begin no suit two years after the cause of action has accrued to you, nor shall you be harassed by suits when the cause of action has accrued more than two years against you. Within that time the estate ought to be nearly settled up and your functions discharged, and we close the door to all litigation not commenced before it has elapsed."

This language has been quoted with approval in numerous cases since.

Obviously, the purpose thus sought to be accomplished can have no application to the facts of the present case, where, as we shall hereafter show, no cause of action against the plaintiffs in error or their authors in title ever existed in favor of the bankrupt or the bankrupt's assignee.

All of the cases relied upon by the plaintiff in error are cases where a cause of action had accrued in favor of or against the bankrupt estate prior to the appointment of the assignee.

In **Greene vs. Taylor, 132 U. S. 415,** the statute of limitations had begun to run against the assignee prior to the sale by the assignee to the purchaser. The Court laid stress upon the fact that a cause of action had accrued to the assignee. See the opinion at the bottom of page 440:

> "But we are of opinion that the right which passed to the assignee to file a bill to redeem began to exist on the 24th of July, 1879; that, as the bankruptcy statute of limitations began then to run against such rights in the hands of the assignee, it continued to run after such right passed to the plaintiffs by the assignee's deed." * * *

See, also, the opinion at page 442:

> "In **Wisner vs. Brown, 122 U. S. 214,** it was held that an assignee in bankruptcy cannot transfer

> to a purchaser the bankrupt's interest in real estate in the possession of another claiming title to it if two years have elapsed from the time **when the cause of action therefor accrued to the assignee."**

See, also, the third paragraph on page 442, where the Court said:

> "These cases show that a conveyance by the assignee in bankruptcy cannot prevent the operation of the bar of the statute against the grantee **when it has already run against the assignee,** or bring into operation a new period of limitation dated from the time of the conveyance. Nor can it interrupt the running of the statute against the claim or right **when it has once commenced to run as against the assignee.** The purchaser takes the right *cum onere,* subject to the continuance of the running of the statute, and subject to the fact that a part of the two years has already run as against the claim or right **while it was in the hands of the assignee."**

In every other case cited by the plaintiffs in error the cause of action had similarly accrued prior to the appointment of the assignee.

In **Gifford vs. Helms, 98 U. S. 248,** the language of the Court makes it clear that a case of action had accrued in favor of the assignee.

See page 252 of the decision, where it is said:

> "If that conveyance was made in fraud of creditors, as alleged by the complainant, it is clear that the equities were transferred to and vested in the assignee when he was appointed, and, of course, his right of action to recover the same commenced at the time the instrument of assignment was executed and delivered. Whatever remedy for the supposed fraud the assignee had, it is evident he might have pursued and enforced at any time after he acquired title to the bankrupt's estate."

But in the present case, as the Supreme Court of Louisiana correctly held, there was no remedy under the law of Louisiana which the assignee here might ever have pursued or enforced, and no right of action which he ever had.

The distinction between the present case and all the cases cited by the plaintiff in error is brought out by the Supreme Court of New York in a decision reviewing the authorities cited by the plaintiffs in error and all the other pertinent decisions.

See **Bowen vs. Delaware, etc., R. R. Co., 153 N. Y. 476 (60 Am. St. Rep. 667):**

> "A statute providing that no suit shall be maintained between an assignee in bankruptcy and a person claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee, does not apply where no adverse claim existed prior to the adjudication in bankruptcy. Therefore, if the adverse claim or entry was not made until after such adjudication, the assignee's right of action is not barred by such statute, but only by the statute of limitations applicable to like actions brought by other persons."

This decision is indeed stronger than required for the purpose of the present case, because there the action was actually brought by the assignee himself, and the cause of action had accrued in his favor; whereas, in the present case, as the discussion hereafter will show, there never was a time when even the assignee himself had a cause of action.

II.

Under the law of Louisiana, no cause of action ever accrued in favor of the bankrupt, or his assignee, under whom defendant in error claims.

The direct and complete authority for this proposition is the decision of the Supreme Court of Louisiana in this case itself.

See **Brewer vs. Yazoo and Mississippi Valley Railroad Company, 128 La. 544,** at page 557, where the Supreme Court of Louisiana, in disposing of the contention made before that Court, with application to Section 5057, said:

> "The provision of law thus invoked applies, in terms, to causes of action which have accrued 'for or against such assignee,' but not to causes of action which arise between persons who purchase property from an assignee and other persons long after such purchases, and long after the assignee has become *functus officio;* and it does not apply to this case, because, in January, 1876, when Reed was appointed assignee in bankruptcy of Brewer, **the cause of action here sued on did not exist,** since neither the defendant nor any of its authors pretended at that time to be in possession of the land here claimed, or had ever done anything to interfere with the constructive possession following the authentic act by which Brewer acquired his title." (Our black-letter.)

See pages 116 and 117 of the printed record.

The question as to when the cause of action relied upon by defendant in error accrued is obviously a question of local, or Louisiana, law. No clearer question of local law could indeed be instanced than a question involving land titles. Under the elementary jurisprudence of this Court, accordingly, the decision of the Supreme Court of Louisiana on this point is final, and will not be inquired into by this Court. For this proposition the citation of authorities is unnecessary.

The decision of the Supreme Court of Louisiana on this point was, moreover, clearly right from all the earlier authorities as to Louisiana law. From a review of such earlier

authorities it will clearly appear that it is well-settled doctrine in Louisiana that the owner of real estate under a recorded deed is deemed to be in constructive or civil possession of the property by virtue of his ownership and the recordation of his title. Unless this constructive or civil possession be disturbed by the actual adverse possession of a hostile claimant, no cause of action to bring a petitory suit (corresponding roughly to the common-law ejectment) arises in favor of the owner. Such a petitory action, therefore, can only be brought against a defendant in actual possession.

See **Louisiana Code of Practice, Article 43:**

> "PETITORY ACTION. The petitory action, or one by which real property or any immovable right to such property may be subjected is claimed, must be brought against the person **who is in the actual possession** of the immovable property, even if the person having the possession be only a farmer or lessee." (Our black-letter.)

See, also:

Scott vs. Bowles, 3 La. An. 637.
Gilmore vs. Schenck, 115 La. 389, 395.
Williams' Heirs vs. Zengel, 117 La. 599, 614.
Wilbert vs. Michel, 42 La. An. 853, 855.

If the owner is himself in actual physical possession of his property, he has a cause of action for slander of title, or what is known in Louisiana as a "jactitation" suit, against the adverse claimant who has spread an opposing title upon the public records. This action for slander of title can, however, be brought only by a owner actually in physical possession.

See:

Dalton vs. Wickliffe, 35 La. An. 365.
McHugh vs. Albert Hanson Lumber Co., 129 La. 680.
Young vs. Morgan City, 129 La. 339.

If, therefore, the owner is not in actual physical possession, and the adverse claimant is not in actual physical possession, the owner can bring neither a petitory action nor an action for slander of title.

See:

Patterson vs. Landru, 112 La. 1069.
Bossier's Heirs vs. Jackson, 114 La. 707.

Prior to 1908, the petitory action and the action for slander of title were the only real actions involving title to property known to the Louisiana law. Prior to 1908, accordingly, an owner of vacant property, as he could bring neither a petitory action nor a jactitation suit, had no cause of action of any sort, and no method by which to try out his title. An owner of vacant property, even if he knew of an adverse claim, had no method open to him in the courts to complain of such adverse claim or to establish the superiority of his own title. In 1908, in order to cure this situation and to enable the bringing of a suit like the present one, the Legislature of the State passed an act (No. 38 of 1908) providing for the maintenance of suits to establish title to real estate where none of the parties are in actual possession of the same. That act reads:

"AN ACT

"To authorize the institution of suits to establish title to real estate **where none of the parties are in the actual possession of the same.**

"SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That in all cases where two or more persons lay claim to land by recorded title, and where **neither of said claimants are in the actual possession** of the land so claimed, either of the claimants may bring suit against one or all

> of the adverse claimants, and for that purpose may join one or more adverse claimants in the same suit as defendants, to have the titles to the land adjudicated upon by the Court having jurisdiction of the property, and it shall not be necessary for the plaintiff to allege or prove possession in himself or the defendants, and this action shall be known as the action to establish title to real estate, and the Judge shall decide which of the claimants are the owners of the land in dispute, provided such judgment shall in no case be *res adjudicata* as to persons not made parties to the suit." (Black-letter ours.)

As both the title of this act and its language indicate, it was the clear and general understanding of the Louisiana law that, without express legislative authority, no suit to establish title to real estate could be maintained where none of the parties were in actual possession of the same.

That the object of Act 38 of 1908 was to create a new cause of action, which did not theretofore exist, to be brought where neither party was in possession, see:

Davidson vs. McDonald, 126 La. 539:

> "This act was passed with the view of establishing a mode of determining title where the facts did not allow of a suit being brought under the articles of the Code of Practice; that is to say, where neither party is in possession" (p. 541).

See, also:

McHugh vs. Albert Hanson Lbr. Co., 129 La. 680.

It was not, therefore, until the passage of the act of 1908 that a cause of action to maintain a suit to establish title in such a situation arose.

The record in this case abundantly shows that no part of the property here involved was ever in the possession of anyone up to the time of the bringing of this suit in 1908.

It follows clearly that no cause of action had ever accrued to the bankrupt prior to the appointment of the assignee in 1875. Brewer, the bankrupt, had no cause of action which he could have asserted; neither did the assignee.

As no cause of action ever accrued, either to the bankrupt or to his assignee, Section 5057 of the Revised Statutes has no application.

There was no one whom either Brewer or his assignee could have ever sued, for there was no one in possession of the property; and, so far as either of them knew, no adverse claim. No right of action ever accrued to anybody until the passage of the act of 1908, at which time the title had long since passed out of the assignee and had been vested in the present defendant in error.

If the contention of the plaintiffs in error could prevail, and the section of the Revised Statutes could be applied, the result would be that no purchaser from an assignee in bankruptcy could ever bring suit for ejectment (which corresponds to a petitory action) two years after the appointment of an assignee, even though the adverse entry relied upon to constitute the cause of action did not accrue, as in this case, for thirty or forty years after the title had passed out of the assignee. The contention of the plaintiffs in error then amounts to this: That every owner of real estate who claims at any point in his chain of title under an assignee in bankruptcy, even though title passed out of that assignee forty years before, and even though the assignee had no cause of action at any time, would be barred by a special limitation of two years, running from the date of the appointment of the assignee, thirty, forty, fifty, years, or an

indefinite period, before. The result of any such construction would be to supersede all ordinary rules and all State statutes as to limitation of actions, and to penalize in perpetuity all parties claiming title through assignees in bankruptcy. Such a result would be absurd, and consistent neither with the letter of Section 5057 nor the spirit thereof.

To sum up, reviewing briefly the assignments of error, it may be pointed out:

(1) The first assignment is the general assignment of error against the decision of the Supreme Court of Louisiana in refusing to sustain the plea of prescription under R. S. 5057.

(2) The second assignment is an erroneous statement of the position of the Court. The Court did **not** hold that Section 5057 of the Revised Statutes did not apply against the transferee of an assignee. The Court admitted that Section 5057 did apply against such transferee where a cause of action had accrued in favor of the assignee himself; but the Court pointed out that here no cause of action had accrued to the assignee.

(3) The third assignment claims error in the Supreme Court of Louisiana in holding that no cause of action had accrued to the assignee.

We have shown that the decision of the Supreme Court of Louisiana on this point was a correct statement of the Louisiana law. Even if it were not, however, this assignment of error is completely disposed of by the fact that the point here involved is one exclusively of Louisiana local law, the decision of the Louisiana Supreme Court upon which, even if mistaken, must be controlling.

(4) The fourth assignment is but a repetition of the second assignment, and is an incorrect statement of the position of the Louisiana Supreme Court.

(5) The fifth assignment is but a restatement and elaboration of the first assignment and the third assignment.

All the assignments are, therefore, without merit.

The present case is controlled by:

Dushane vs. Beale, 161 U. S. 513.

Hammond vs. Whittridge, 204 U. S. 538.

Bowen vs. Delaware Central R. R., 173 N. Y. 476.

We therefore respectfully submit that (if the writ be not dismissed for want of appealable interest and lack of proper parties) the decision of the Supreme Court of Louisiana was clearly right, and should be affirmed. And we pray accordingly.

J. BLANC MONROE,
MONTE M. LEMANN,
Attorneys for Defendant in Error.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 62.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, ETIENNE GELE *ET AL.*,

Plaintiffs in Error,

versus

MRS. ANNIE E. BREWER,

Defendant in Error.

MEMORANDUM FOR DEFENDANT IN ERROR IN REPLY TO BRIEF OF PLAINTIFFS IN ERROR.

If the Court Please:

Having just been served (November 7, 1913) with a copy of the brief of plaintiffs in error, we desire to emphasize, very briefly, certain points:

FIRST. Plaintiffs in error make no reply whatsoever to the point elaborated at pages 5 and 6 of our original brief,

that they have no appealable interest, because they were not prejudiced in any way by the judgment below, which dismissed finally all claims against them.

SECOND. The only reply which the plaintiffs in error attempt to make to the point that the writ must be dismissed because the other parties in interest are not parties to it, is the suggestion at page 18 of their brief, that they are protected by the decisions of this Court holding that, where there is a separate judgment or decree against one of several defendants, such defendant can appeal or bring a writ of error without joining the other defendants.

The plain answer to this attempted reply is that in this case there is no separate judgment or decree against the plaintiffs in error. There is no judgment or decree of any kind against the plaintiffs in error. Even if your Honors could read into the record any judgment or decree at all against the plaintiffs in error, it would certainly not be a separate judgment or decree; it would be a judgment affecting the plaintiffs in error jointly with the other parties below, the original defendant and the other defendants in warranty, none of whom are in any way parties here.

This case is, therefore, obviously not within the authorities cited.

THIRD. The plaintiffs in error expressly concede that the vital point in this case is the law of Louisiana, as to when a cause of action accrued.

We quote from pages 13 and 14 of the brief of plaintiffs in error:

> "Let us now again refer to the question relative to the time at which the cause of action accrued herein to the assignee of George Brewer and to his transferee, Mrs. Brewer.

> "This seems the vital point in this case; and for that purpose the law of Louisiana, we submit, is to be consulted."

Here plaintiffs in error themselves say that, to settle the vital point in this case, the law of Louisiana must be consulted. By this statement, plaintiffs in error in effect state themselves out of court; for, if the vital point in the case is the law of Louisiana, that law must be settled by the decision of the Supreme Court of Louisiana, which your Honors will accept as controlling.

Plaintiffs in error admit this by proceeding to review the Louisiana authorities.

But the final and perfectly square decision of the Louisiana Supreme Court as to the Louisiana law is certainly the decision of that court *in this very case*. That decision, quoted at page 14 of our original brief, is unequivocally to the effect that no cause of action accrued to the assignee here. This, as plaintiffs in error themselves point out, is a point of Louisiana law upon which the finding of the Louisiana Supreme Court is final. That disposes of the vital point in the case.

This case in this respect is controlled by *Abraham vs. Casey*, 179 U. S. 210.

> See, also, *Clarke vs. Clarke*, 178 U. S. 186-190; *Hibben vs. Smith*, 191 U. S. 310; *Sauer vs. New York*, 206 U. S. 536; *Thompson vs. Fairbanks*, 196 U. S. 516.

FOURTH. Plaintiffs in error attempt in effect to show that the decision of the Supreme Court of Louisiana in this case was erroneous, by referring to other Louisiana decisions. If it were erroneous, your Honors would not ex-

amine into or declare the fact, for your Honors take the point of Louisiana law involved as final, regardless whether or not it is a correct statement of the Louisiana law. The Louisiana Supreme Court is the final judge as to what the Louisiana law is.

But even if your Honors, notwithstanding your repeated decisions, could undertake an independent examination of your own into the Louisiana law, the result would be the same.

Plaintiffs in error cite two cases which they claim to be inconsistent with the decision of the Louisiana Supreme Court in this case.

In the first of the cases cited, *Lacroix vs. Villio*, 123 La. 459, plaintiffs in error, in their quotation of the syllabus, have omitted entirely from it a very important line which appears in the original syllabus, which reads:

> "Where a party not in actual possession, but claiming to be the owner of certain real estate, brings suit against another not in actual possession, alleging that the latter has inflicted injury upon him **by destroying the recorded evidence of his title,** and by causing to be inscribed in the public records a pretended and fraudulent adverse title, he has a standing in court, and, if his allegations be sustained by proof, is entitled to damages, under Civil Code, Arts. 21, 2315, though his action be not specifically classified by the Code of Practice."

The black-letter portion of this quotation was entirely omitted from plaintiffs in error's quotation, and in itself radically distinguishes the case cited from this case.

Entirely from this, however, the decision is expressly rested by the Court upon Act 38 of 1908, printed in our original brief at page 16.

See *Lacroix vs. Villio*, 123 La. 459, at page 462, where the Court said:

> "Act No. 38, p. 38, of 1908, has created a special action for the case where neither party is in physical possession."

But Act No. 38 of 1908, as we have pointed out, was never available to the assignee in bankruptcy here.

The second case cited by plaintiffs in error, *Atchafalaya Land Company, Limited, vs. Brownell-Drews Lumber Company*, 130 La. (p. 14 of their brief), was likewise decided after the passage of Act 38 of 1908, and was based on the decision of *Lacroix vs. Villio*, which in turn was based, as we have shown, on Act 38 of 1908.

We therefore submit that the plaintiffs in error have in no particular replied to the points made in our original brief. Their writ of error should be dismissed for lack of interest and lack of parties. But if the merits of the case be considered at all, then as the vital point, according to plaintiffs in error themselves, is a point of Louisiana law which has been finally decided in this very case by the Louisiana Supreme Court itself, the judgment of the Louisiana Supreme Court in this case must be taken as correct and, accordingly, affirmed.

Respectfully submitted,

J. BLANC MONROE,
MONTE M. LEMANN,
Attorneys for Defendant in Error.

J. Blanc Monroe
Monte M. Lemann